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PREFACE

The publication of this series of volumes, under varying titles, was inaugurated by the Naval War College in 1894. This is the forty-sixth volume in the series as numbered for index purposes (this numbering does not cover the volumes for 1894, 1895, 1896, 1897, 1899 and 1900, the additional volume published in 1904, or the four index volumes for 1901–10, 1901–20, 1904–30, and 1931–40). The immediately preceding volume, entitled "International Law Documents 1946–1947," was published in 1948.

As in previous years, the volume has been prepared in collaboration with the Associate for International Law of the Naval War College—Judge Manley O. Hudson, Bemis Professor of International Law in the Harvard Law School.

An effort has been made to include in the volume basic materials on problems of international law of current interest. As some of these materials are not generally accessible, it is hoped that the collection will be found to serve a useful purpose both by naval officers and by a wider circle of people working in the field.

Acknowledgment is due to the University of Chicago for the privilege of reproducing translations of constitutional provisions from "The Constitutions of the Americas," edited by Russell H. Fitzgibbon and others (1948).

D. B. Beary,
Vice Admiral, United States Navy,
President, Naval War College.

Newport, 1 November 1949.

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I. INTERNATIONAL ORGANIZATION

1. Charter of the Organization of American States, Bogotá, 30 April 1948

NOTE. The International Union of American Republics has existed under various names since 1890, but it has had no basic constitutional instrument. It has functioned chiefly through the International Conferences of American States, held in 1889–90, 1901–2, 1906, 1910, 1923, 1928, 1933, 1938 and 1948, and it has maintained a permanent secretariat which since 1910 has been known as the Pan American Union. The Convention on the Pan American Union, adopted by the Sixth International Conference of American States in 1928 and ratified by 16 States, did not enter into force.

The Inter-American Conference on Problems of War and Peace, held at Mexico City from 21 February to 8 March 1945, adopted a resolution on the reorganization, consolidation and strengthening of the inter-American system, and charged the Governing Board of the Pan American Union with preparing a draft charter. A draft prepared by a special committee of the Governing Board was communicated to the Governments of the American States in 1947 leading to the adoption of this Charter by the Ninth International Conference of American States at Bogotá on 30 April 1948.

On 1 July 1949, ratifications of the Charter had been deposited with the Pan American Union by Costa Rica and Mexico.

(Pan American Union Law and Treaty Series, No. 23.)

In the name of their peoples, the States represented at the Ninth International Conference of American States,

Convinced that the historic mission of America is to offer to man a land of liberty, and a favorable environment for the development of his personality and the realization of his just aspirations;

Conscious that that mission has already inspired numerous agreements, whose essential value lies in the desire of the American peoples to live together in peace, and, through their mutual understanding and respect for the sovereignty of each one, to provide for the betterment of all, in independence, in equality and under law;

Confident that the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent, within the framework

of democratic institutions, of a system of individual liberty and social justice based on respect for the essential rights of man;

Persuaded that their welfare and their contribution to the progress and the civilization of the world will increasingly require intensive continental cooperation;

Resolved to persevere in the noble undertaking that humanity has conferred upon the United Nations, whose principles and purposes they solemnly reaffirm;

Convinced that juridical organization is a necessary condition for security and peace founded on moral order and on justice; and

In accordance with Resolution IX of the Inter-American Conference on Problems of War and Peace, held at Mexico City, have agreed upon the following

Charter of the Organization of American States

part one

Chapter I. Nature and Purposes

Article 1. The American States establish by this Charter the international organization that they have developed to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity and their independence. Within the United Nations, the Organization of American States is a regional agency.

Article 2. All American States that ratify the present Charter are Members of the Organization.

Article 3. Any new political entity that arises from the union of several Member States and that, as such, ratifies the present Charter, shall become a Member of the Organization. The entry of the new

political entity into the Organization shall result in the loss of membership of each one of the States which constitute it.

Article 4. The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the Charter of the United Nations, proclaims the following essential purposes:

(*a*) To strengthen the peace and security of the continent;

(*b*) To prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the Member States;

(*c*) To provide for common action on the part of those States in the event of aggression;

(*d*) To seek the solution of political, juridical and economic problems that may arise among them; and

(*e*) To promote, by cooperative action, their economic, social and cultural development.

Chapter II

Principles

Article 5. The American States reaffirm the following principles:

(*a*) International law is the standard of conduct of States in their reciprocal relations;

(*b*) International order consists essentially of respect for the personality, sovereignty and independence of States, and the faithful fulfillment of obligations derived from treaties and other sources of international law;

(*c*) Good faith shall govern the relations between States;

(*d*) The solidarity of the American States and the high aims which are sought through it require the

political organization of those States on the basis of the effective exercise of representative democracy;

(*e*) The American States condemn war of aggression: victory does not give rights;

(*f*) An act of aggression against one American State is an act of aggression against all the other American States;

(*g*) Controversies of an international character arising between two or more American States shall be settled by peaceful procedures;

(*h*) Social justice and social security are bases of lasting peace;

(*i*) Economic cooperation is essential to the common welfare and prosperity of the peoples of the continent;

(*j*) The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex;

(*k*) The spiritual unity of the continent is based on respect for the cultural values of the American countries and requires their close cooperation for the high purposes of civilization;

(*l*) The education of peoples should be directed toward justice, freedom and peace.

Chapter III. Fundamental Rights and Duties of States

Article 6. States are juridically equal, enjoy equal rights and equal capacity to exercise these rights, and have equal duties. The rights of each State depend not upon its power to ensure the exercise thereof, but upon the mere fact of its existence as a person under international law.

Article 7. Every American State has the duty to respect the rights enjoyed by every other State in accordance with international law.

Article 8. The fundamental rights of States may not be impaired in any manner whatsoever.

Article 9. The political existence of the State is independent of recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts. The exercise of these rights is limited only by the exercise of the rights of other States in accordance with international law.

Article 10. Recognition implies that the State granting it accepts the personality of the new State, with all the rights and duties that international law prescribes for the two States.

Article 11. The right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another State.

Article 12. The jurisdiction of States within the limits of their national territory is exercised equally over all the inhabitants, whether nationals or aliens.

Article 13. Each State has the right to develop its cultural, political and economic life freely and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality.

Article 14. Respect for and the faithful observance of treaties constitute standards for the development of peaceful relations among States. International treaties and agreements should be public.

Article 15. No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form

of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.

Article 16. No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.

Article 17. The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.

Article 18. The American States bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defense in accordance with existing treaties or in fulfillment thereof.

Article 19. Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 15 and 17.

Chapter IV. Pacific Settlement of Disputes

Article 20. All international disputes that may arise between American States shall be submitted to the peaceful procedures set forth in this Charter, before being referred to the Security Council of the United Nations.

Article 21. The following are peaceful procedures; direct negotiation, good offices, mediation, investigation and conciliation, judicial settlement, arbitration, and those which the parties to the dispute may especially agree upon at any time.

Article 22. In the event that a dispute arises between two or more American States which, in the opinion of one of them, cannot be settled through the usual diplomatic channels, the Parties shall agree on some other peaceful procedure that will enable them to reach a solution.

Article 23. A special treaty will establish adequate procedures for the pacific settlement of disputes and will determine the appropriate means for their application, so that no dispute between American States shall fail of definitive settlement within a reasonable period.

Chapter V. Collective Security

Article 24. Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States.

Article 25. If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by an extra-continental conflict, or by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defense, shall apply the measures and procedures established in the special treaties on the subject.

Chapter VI. Economic Standards

Article 26. The Member States agree to cooperate with one another, as far as their resources

may permit and their laws may provide, in the broadest spirit of good neighborliness, in order to strengthen their economic structure, develop their agriculture and mining, promote their industry and increase their trade.

Article 27. If the economy of an American State is affected by serious conditions that cannot be satisfactorily remedied by its own unaided effort, such State may place its economic problems before the Inter-American Economic and Social Council to seek through consultation the most appropriate solution for such problems.

Chapter VII. Social Standards

Article 28. The Member States agree to cooperate with one another to achieve just and decent living conditions for their entire populations.

Article 29. The Member States agree upon the desirability of developing their social legislation on the following bases:

(*a*) All human beings, without distinction as to race, nationality, sex, creed or social condition, have the right to attain material well-being and spiritual growth under circumstances of liberty, dignity, equality of opportunity, and economic security:

(*b*) Work is a right and a social duty; it shall not be considered as an article of commerce; it demands respect for freedom of association and for the dignity of the worker; and it is to be performed under conditions that ensure life, health and a decent standard of living, both during the working years and during old age, or when any circumstance deprives the individual of the possibility of working.

Chapter VIII. Cultural Standards

Article 30. The Member States agree to promote, in accordance with their constitutional

provisions and their material resources, the exercise of the right to education, on the following bases:

(*a*) Elementary education shall be compulsory and, when provided by the State, shall be without cost;

(*b*) Higher education shall be available to all, without distinction as to race, nationality, sex, language creed or social condition.

ARTICLE 31. With due consideration for the national character of each State, the Member States shall undertake to facilitate free cultural interchange by every medium of expression.

PART TWO

CHAPTER IX. THE ORGANS

ARTICLE 32. The Organization of American States accomplishes its purposes by means of:

(*a*) The Inter-American Conference;
(*b*) The Meeting of Consultation of Ministers of Foreign Affairs;
(*c*) The Council;
(*d*) The Pan American Union;
(*e*) The Specialized Conferences; and
(*f*) The Specialized Organizations.

CHAPTER X. THE INTER-AMERICAN CONFERENCE

ARTICLE 33. The Inter-American Conference is the supreme organ of the Organization of American States. It decides the general action and policy of the Organization and determines the strucurte and functions of its Organs, and has the authority to consider any matter relating to friendly relations among the American States. These functions shall be carried out in accordance with the provisions of this Charter and of other inter-American treaties.

ARTICLE 34. All Member States have the right

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to be represented at the Inter-American Conference. Each State has the right to one vote.

Article 35. The Conference shall convene every five years at the time fixed by the Council of the Organization, after consultation with the government of the country where the Conference is to be held.

Article 36. In special circumstances and with the approval of two-thirds of the American Governments, a special Inter-American Conference may be held, or the date of the next regular Conference may be changed.

Article 37. Each Inter-American Conference shall designate the place of meeting of the next Conference. If for any unforeseen reason the Conference cannot be held at the place designated, the Council of the Organization shall designate a new place.

Article 38. The program and regulations of the Inter-American Conference shall be prepared by the Council of the Organization and submitted to the Member States for consideration.

Chapter XI. The Meeting of Consultation of Ministers of Foreign Affairs

Article 39. The Meeting of Consultation of Ministers of Foreign Affairs shall be held in order to consider problems of an urgent nature and of common interest to the American States, and to serve as the Organ of Consultation.

Article 40. Any Member State may request that a Meeting of Consultation be called. The request shall be addressed to the Council of the Organization, which shall decide by an absolute majority whether a meeting should be held.

Article 41. The program and regulations of the Meeting of Consultation shall be prepared by the

Council of the Organization and submitted to the Member States for consideration.

Article 42. If, for exceptional reasons, a Minister of Foreign Affairs is unable to attend the meeting, he shall be represented by a special delegate.

Article 43. In case of an armed attack within the territory of an American State or within the region of security delimited by treaties in force, a Meeting of Consultation shall be held without delay. Such Meeting shall be called immediately by the Chairman of the Council of the Organization, who shall at the same time call a meeting of the Council itself.

Article 44. An Advisory Defense Committee shall be established to advise the Organ of Consultation on problems of military cooperation that may arise in connection with the application of existing special treaties on collective security.

Article 45. The Advisory Defense Committee shall be composed of the highest military authorities of the American States participating in the Meeting of Consultation. Under exceptional circumstances the Governments may appoint substitutes. Each State shall be entitled to one vote.

Article 46. The Advisory Defense Committee shall be convoked under the same conditions as the Organ of Consultation, when the latter deals with matters relating to defense against aggression.

Article 47. The Committee shall also meet when the Conference or the Meeting of Consultation or the Governments, by a two-thirds majority of the Member States, assign to it technical studies or reports on specific subjects.

Chapter XII. The Council

Article 48. The Council of the Organization of American States is composed of one Representative

of each Member State of the Organization, especially appointed by the respective Government, with the rank of Ambassador. The appointment may be given to the diplomatic representative accredited to the Government of the country in which the Council has its seat. During the absence of the titular Representative, the Government may appoint an interim Representative.

ARTICLE 49. The Council shall elect a Chairman and a Vice Chairman, who shall serve for one year and shall not be eligible for election to either of those positions for the term immediately following.

ARTICLE 50. The Council takes cognizance, within the limits of the present Charter and of inter-American treaties and agreements, of any matter referred to it by the Inter-American Conference or the Meeting of Consultation of Ministers of Foreign Affairs.

ARTICLE 51. The Council shall be responsible for the proper discharge by the Pan American Union of the duties assigned to it.

ARTICLE 52. The Council shall serve provisionally as the Organ of Consultation when the circumstances contemplated in Article 43 of this Charter arise.

ARTICLE 53. It is also the duty of the Council:

(*a*) To draft and submit to the Governments and to the Inter-American Conference proposals for the creation of new Specialized Organizations or for the combination, adaptation or elimination of existing ones, including matters relating to the financing and support thereof:

(*b*) To draft recommendations to the Governments, the Inter-American Conference, the Specialized Conferences or the Specialized Organizations, for the coordination of the activities and programs of such organizations, after consultation with them;

(*c*) To conclude agreements with the Inter-American Specialized Organizations to determine the relations that shall exist between the respective agency and the Organization;

(*d*) To conclude agreements or special arrangements for cooperation with other American organizations of recognized international standing;

(*e*) To promote and facilitate collaboration between the Organization of American States and the United Nations, as well as between Inter-American Specialized Organizations and similar international agencies;

(*f*) To adopt resolutions that will enable the Secretary General to perform the duties envisaged in Article 84;

(*g*) To perform the other duties assigned to it by the present Charter.

ARTICLE 54. The Council shall establish the bases for fixing the quota that each Government is to contribute to the maintenance of the Pan American Union, taking into account the ability to pay of the respective countries and their determination to contribute in an equitable manner. The budget, after approval by the Council, shall be transmitted to the Governments at least six months before the first day of the fiscal year, with a statement of the annual quota of each country. Decisions on budgetary matters require the approval of two-thirds of the members of the Council.

ARTICLE 55. The Council shall formulate its own regulations.

ARTICLE 56. The Council shall function at the seat of the Pan American Union.

ARTICLE 57. The following are organs of the Council of the Organization of American States:

(*a*) The Inter-American Economic and Social Council;

(*b*) The Inter-American Council of Jurists; and
(*c*) The Inter-American Cultural Council.

ARTICLE 58. The organs referred to in the preceding article shall have technical autonomy within the limits of this Charter; but their decisions shall not encroach upon the sphere of action of the Council of the Organization.

ARTICLE 59. The organs of the Council of the Organization are composed of representatives of all the Member States of the Organization.

ARTICLE 60. The organs of the Council of the Organization shall, as far as possible, render to the Governments such technical services as the latter may request; and they shall advise the Council of the Organization on matters within their jurisdiction.

ARTICLE 61. The organs of the Council of the Organization shall, in agreement with the Council, establish cooperative relations with the corresponding organs of the United Nations and with the national or international agencies that function within their respective spheres of action.

ARTICLE 62. The Council of the Organization, with the advice of the appropirate bodies and after consultation with the Governments, shall formulate the statutes of its organs in accordance with and in the execution of the provisions of this Charter. The organs shall formulate their own regulations.

(A) *The Inter-American Economic and Social Council*

ARTICLE 63. The Inter-American Economic and Social Council has for its principal purpose the promotion of the economic and social welfare of the American nations through effective cooperation for the better utilization of their natural resources, the development of their agriculture and industry and the raising of the standards of living of their peoples.

Article 64. To accomplish this purpose the Council shall:

(*a*) Propose the means by which the American nations may give each other technical assistance in making studies and formulating and executing plans to carry out the purposes referred to in Article 26 and to develop and improve their social services;

(*b*) Act as coordinating agency for all official inter-American activities of an economic and social nature;

(*c*) Undertake studies on its own initiative or at the request of any Member State;

(*d*) Assemble and prepare reports on economic and social matters for the use of the Member States;

(*e*) Suggest to the Council of the Organization the advisability of holding specialized conferences on economic and social matters;

(*f*) Carry on such other activities as may be assigned to it by the Inter-American Conference, the Meeting of Consultation of Ministers of Foreign Affairs, or the Council of the Organization.

Article 65. The Inter-American Economic and Social Council, composed of technical delegates appointed by each Member State, shall meet on its own initiative or on that of the Council of the Organization.

Article 66. The Inter-American Economic and Social Council shall function at the seat of the Pan American Union, but it may hold meetings in any American city by a majority decision of the Member States.

(B) *The Inter-American Council of Jurists*

Article 67. The purpose of the Inter-American Council of Jurists is to serve as an advisory body on juridical matters; to promote the development and codification of public and private international law; and to study the possibility of attaining uniformity

in the legislation of the various American countries, insofar as it may appear desirable.

Article 68. The Inter-American Juridical Committee of Rio de Janeiro shall be the permanent committee of the Inter-American Council of Jurists.

Article 69. The Juridical Committee shall be composed of jurists of the nine countries selected by the Inter-American Conference. The selection of the jurists shall be made by the Inter-American Council of Jurists from a panel submitted by each country chosen by the Conference. The Members of the Juridical Committee represent all Member States of the Organization. The Council of the Organization is empowered to fill any vacancies that occur during the intervals between Inter-American Conferences and between meetings of the Inter-American Council of Jurists.

Article 70. The Juridical Committee shall undertake such studies and preparatory work as are assigned to it by the Inter-American Council of Jurists, the Inter-American Conference, the Meeting of Consultation of Ministers of Foreign Affairs, or the Council of the Organization. It may also undertake those studies and projects which, on its own initiative, it considers advisable.

Article 71. The Inter-American Council of Jurists and the Juridical Committee should seek the cooperation of national committees for the codification of international law, of institutes of international and comparative law, and of other specialized agencies.

Article 72. The Inter-American Council of Jurists shall meet when convened by the Council of the Organization, at the place determined by the Council of Jurists at its previous meeting.

(C) *The Inter-American Cultural Council*

ARTICLE 73. The purpose of the Inter-American Cultural Council is to promote friendly relations and mutual understanding among the American peoples, in order to strengthen the peaceful sentiments that have characterized the evolution of America, through the promotion of educational, scientific and cultural exchange.

ARTICLE 74. To this end the principal functions of the Council shall be:

(*a*) To sponsor inter-American cultural activities;

(*b*) To collect and supply information on cultural activities carried on in and among the American States by private and official agencies both national and international in character;

(*c*) To promote the adoption of basic educational programs adapted to the needs of all population groups in the American countries;

(*d*) To promote, in addition, the adoption of special programs of training, education and culture for the indigenous groups of the American countries;

(*e*) To cooperate in the protection, preservation and increase of the cultural heritage of the continent;

(*f*) To promote cooperation among the American nations in the fields of education, science and culture, by means of the exchange of materials for research and study, as well as the exchange of teachers, students, specialists and, in general, such other persons and materials as are useful for the realization of these ends;

(*g*) To encourage the education of the peoples for harmonious international relations;

(*h*) To carry on such other activities as may be assigned to it by the Inter-American Conference, the Meeting of Consultation of Ministers of Foreign Affairs, or the Council of the Organization.

Article 75. The Inter-American Cultural Council shall determine the place of its next meeting and shall be convened by the Council of the Organization on the date chosen by the latter in agreement with the Government of the country selected as the seat of the meeting.

Article 76. There shall be a Committee for Cultural Action of which five States, chosen at each Inter-American Conference, shall be members. The individuals composing the Committee for Cultural Action shall be selected by the Inter-American Cultural Council from a panel submitted by each country chosen by the Conference, and they shall be specialists in education or cultural matters. When the Inter-American Cultural Council and the Inter-American Conference are not in session, the Council of the Organization may fill vacancies that arise and replace those countries that find it necessary to discontinue their cooperation.

Article 77. The Committee for Cultural Action shall function as the permanent committee of the Inter-American Cultural Council, for the purpose of preparing any studies that the latter may assign to it. With respect to these studies the Council shall have the final decision.

Chapter XIII. The Pan American Union

Article 78. The Pan American Union is the central and permanent organ of the Organization of American States and the General Secretariat of the Organization. It shall perform the duties assigned to it in this Charter and such other duties as may be assigned to it in other inter-American treaties and agreements.

Article 79. There shall be a Secretary General of the Organization, who shall be elected by the

Council for a ten-year term and who may not be reelected or be succeeded by a person of the same nationality. In the event of a vacancy in the ffice of Secretary General, the Council shall, within the next ninety days, elect a successor to fill the office for the remainder of the term, who may be reelected if the vacancy occurs during the second half of the term.

ARTICLE 80. The Secretary General shall direct the Pan American Union and be the legal representative thereof.

ARTICLE 81. The Secretary General shall participage with voice, but without vote, in the deliberations of the Inter-American Conference, the Meeting of Consultation of Ministers of Foreign Affairs, the Specialized Conferences, and the Council and its organs.

ARTICLE 82. The Pan American Union, through its technical and information offices, shall, under the direction of the Council, promote economic, social, juridical and cultural relations among all the Member States of the Organization.

ARTICLE 83. The Pan American Union shall also perform the following functions:

(*a*) Transmit *ex officio* to Member States the convocation to the Inter-American Conference, the Meeting of Consultation of Ministers of Foreign Affairs, and the Specialized Conferences;

(*b*) Advise the Council and its organs in the preparation of programs and regulations of the Inter-American Conference, the Meeting of Consultation of Ministers of Foreign Affairs, and the Specialized Conferences;

(*c*) Place, to the extent of its ability, at the disposal of the Government of the country where a conference is to be held, the technical aid and personnel which such Government may request;

(*d*) Serve as custodian of the documents and archives of the Inter-American Conference, of the Meeting of Consultation of Ministers of Foreign Affairs, and, insofar as possible, of the Specialized Conferences;

(*e*) Serve as depository of the instruments of ratification of inter-American agreements;

(*f*) Perform the functions entrusted to it by the Inter-American Conference, and the Meeting of Consultation of Ministers of Foreign Affairs;

(*g*) Submit to the Council an annual report on the activities of the Organization;

(*h*) Submit to the Inter-American Conference a report on the work accomplished by the Organs of the Organization since the previous Conference.

ARTICLE 84. It is the duty of the Secretary General:

(*a*) To establish, with the approval of the Council, such technical and administrative offices of the Pan American Union as are necessary to accomplish its purposes;

(*b*) To determine the number of department heads, officers and employees of the Pan American Union; to appoint them, regulate their powers and duties, and fix their compensation, in accordance with general standards established by the Council.

ARTICLE 85. There shall be an Assistant Secretary General, elected by the Council for a term of ten years and eligible for reelection. In the event of a vacancy in the office of Assistant Secretary General, the Council shall, within the next ninety days, elect a successor to fill such office for the remainder of the term.

ARTICLE 86. The Assistant Secretary General shall be the Secretary of the Council. He shall perform the duties of the Secretary General during the temporary absence or disability of the latter, or during the

ninety-day vacancy referred to in Article 79. He shall also serve as advisory officer to the Secretary General, with the power to act as his delegate in all matters that the Secretary General may entrust to him.

Article 87. The Council, by a two-thirds vote of its members, may remove the Secretary General or the Assistant Secretary General whenever the proper functioning of the Organization so demands.

Article 88. The heads of the respective departments of the Pan American Union, appointed by the Secretary General, shall be the Executive Secretaries of the Inter-American Economic and Social Council, the Council of Jurists and the Cultural Council.

Article 89. In the performance of their duties the personnel shall not seek or receive instructions from any government or from any other authority outside the Pan American Union. They shall refrain from any action that might reflect upon their position as international officials responsible only to the Union.

Article 90. Every Member of the Organization of American States pledges itself to respect the exclusively international character of the responsibilities of the Secretary General and the personnel, and not to seek to influence them in the discharge of their duties.

Article 91. In selecting its personnel the Pan American Union shall give first consideration to efficiency, competence and integrity; but at the same time importance shall be given to the necessity of recruiting personnel on as broad a geographical basis as possible.

Article 92. The seat of the Pan American Union is the city of Washington.

Chapter XIV. The Specialized Conferences

Article 93. The Specialized Conferences shall meet to deal with special technical matters or to develop specific aspects of inter-American cooperation, when it is so decided by the Inter-American Conference or the Meeting of Consultation of Ministers of Foreign Affairs; when inter-American agreements so provide; or when the Council of the Organization considers it necessary, either on its own initiative or at the request of one of its organs or of one of the Specialized Organizations.

Article 94. The program and regulations of the Specialized Conferences shall be prepared by the organs of the Council of the Organization or by the Specialized Organizations concerned; they shall be submitted to the Member Governments for consideration and transmitted to the Council for its information.

Chapter XV. The Specialized Organizations

Article 95. For the purposes of the present Charter, Inter-American Specialized Organizations are the intergovernmental organizations established by multilateral agreements and having specific functions with respect to technical matters of common interest to the American States.

Article 96. The Council shall, for the purposes stated in Article 53, maintain a register of the Organizations that fulfill the conditions set forth in the foregoing Article.

Article 97. The Specialized Organizations shall enjoy the fullest technical autonomy and shall take into account the recommendations of the Council, in conformity with the provisions of the present Charter.

Article 98. The Specialized Organizations shall submit to the Council periodic reports on the progress

of their work and on their annual budgets and expenses.

Article 99. Agreements between the Council and the Specialized Organizations contemplated in paragraph (*c*) of Article 53 may provide that such Organizations transmit their budgets to the Council for approval. Arrangements may also be made for the Pan American Union to receive the quotas of the contributing countries and distribute them in accordance with the said agreements.

Article 100. The Specialized Organizations shall establish cooperative relations with world agencies of the same character in order to coordinate their activities. In concluding agreements with international agencies of a world-wide character, the Inter-American Specialized Organizations shall preserve their identity and their status as integral parts of the Organization of American States, even when they perform regional functions of international agencies.

Article 101. In determining the geographic location of the Specialized Organizations the interests of all the American States shall be taken into account.

PART THREE

Chapter XVI. The United Nations

Article 102. None of the provisions of this Charter shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations.

Chapter XVII. Miscellaneous Provisions

Article 103. The Organization of American States shall enjoy in the territory of each Member such legal capacity, privileges and immunities as are necessary for the exercise of its functions and the accomplishment of its purposes.

Article 104. The Representatives of the Governments on the Council of the Organization, the representatives on the organs of the Council, the personnel of their delegations, as well as the Secretary General and the Assistant Secretary General of the Organization, shall enjoy the privileges and immunities necessary for the independent performance of their duties.

Article 105. The juridical status of the Inter-American Specialized Organizations and the privileges and immunities that should be granted to them and to their personnel, as well as to the officials of the Pan American Union, shall be determined in each case through agreements between the respective organizations and the Governments concerned.

Article 106. Correspondence of the Organization of American States, including printed matter and parcels, bearing the frank thereof, shall be carried free of charge in the mails of the Member States.

Article 107. The Organization of American States does not recognize any restriction on the eligibility of men and women to participate in the activities of the various Organs and to hold positions therein.

Chapter XVIII. Ratification and Entry Into Force

Article 108. The present Charter shall remain open for signature by the American States and shall be ratified in accordance with their respective constitutional procedures. The original instrument, the Spanish, English, Portuguese and French texts of which are equally authentic, shall be deposited with the Pan American Union, which shall transmit certified copies thereof to the Governments for purposes of ratification. The instruments of ratification shall be deposited with the Pan American Union, which shall notify the signatory States of such deposit.

ARTICLE 109. The present Charter shall enter into force among the ratifying States when two-thirds of the signatory States have deposited their ratifications. It shall enter into force with respect to the remaining States in the order in which they deposit their ratifications.

ARTICLE 110. The present Charter shall be registered with the Secretariat of the United Nations through the Pan American Union.

ARTICLE 111. Amendments to the present Charter may be adopted only at an Inter-American Conference convened for that purpose. Amendments shall enter into force in accordance with the terms and the procedure set forth in Article 109.

ARTICLE 112. The present Charter shall remain in force indefinitely, but may be denounced by any Member State upon written notification to the Pan American Union, which shall communicate to all the others each notice of denunciation received. After two years from the date on which the Pan American Union receives a notice of denunciation, the present Charter shall cease to be in force with respect to the denouncing State, which shall cease to belong to the Organization after it has fulfilled the obligations arising from the present Charter.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, whose full powers have been presented and found to be in good and due form, sign the present Charter at the city of Bogota, Colombia, on the dates that appear opposite their respective signatures.

[The Charter was signed on behalf of 21 American Republics.]

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2. American Treaty of Pacific Settlement: "Pact of Bogotá,"

Bogotá, 30 April 1948

NOTE. Various conferences of the American States have adopted instrumen ts concerning the pacific settlement of disputes, the more important being: (1) The Treaty to Avoid or Prevent Conflicts Between the American States, 3 May 1923 (U. S. Treaty Series, No. 752); (2) the General Convention of Inter-American Conciliation, 5 January 1929 (U. S. Treaty Series, No. 780); (3) the General Treaty of Inter-American Arbitration and Additional Protocol of Progressive Arbitration, 5 January 1929 (U. S. Treaty Series, No. 886); (4) the Anti-War Treaty of Non-Aggression and Conciliation, 10 October 1933 (U. S. Treaty Series, No. 906); (5) the Convention to Coordinate, Extend and Assure the Fulfillment of the Existing Treaties Between the American States, 23 December 1936 (U. S. Treaty Series, No. 926); (6) the Inter-American Treaty on Good Offices and Mediation, 23 December 1936 (U. S. Treaty Series, No. 925); and (7) the Treaty on the Prevention of Controversies, 23 December 1936 (U. S. Treaty Series, No. 924).

The Inter-American Conference on Problems of War and Peace, held at Mexico City from 21 February to 8 March 1945, adopted a resolution calling for the coordination of the various continental agreements for the prevention and pacific solution of controversies. Drafts were prepared by the Inter-American Juridicial Committee and communicated to the Governments of the American continent in 1945 and 1947, leading to the adoption of this Treaty by the Ninth International Conference of American States at Bogotá on 30 April 1948.

On 1 July 1949, a ratification of this Treaty had been deposited by Mexico.

(Pan American Union Law and Treaty Series, No. 24).

In the name of their peoples, the Governments represented at the Ninth International Conference of American States have resolved, in fulfillment of Article XXIII of the Charter of the Organization of American States, to conclude the following Treaty:

CHAPTER I. GENERAL OBLIGATION TO SETTLE DISPUTES BY PACIFIC MEANS

ARTICLE I. The High Contracting Parties, solemnly reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the threat or the use of force, or from any other means of coercion for the settlement of their controversies, and to have recourse at all times to pacific procedures.

Article II. The High Contracting Parties recognize the obligation to settle international controversies by regional pacific procedures before referring them to the Security Council of the United Nations.

Consequently, in the event that a controversy arises between two or more signatory states which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution.

Article III. The order of the pacific procedures established in the present Treaty does not signify that the parties may not have recourse to the procedure which they consider most appropriate in each case, or that they should use all these procedures, or that any of them have preference over others except as expressly provided.

Article IV. Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfillment of the present Treaty or a previous pact, no other procedure may be commenced until that procedure is concluded.

Article V. The aforesaid procedures may not be applied to matters which, by their nature, are within the domestic jurisdiction of the state. If the parties are not in agreement as to whether the controversy concerns a matter of domestic jurisdiction, this preliminary question shall be submitted to decision by the International Court of Justice, at the request of any of the parties.

Article VI. The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangement between the parties, or by arbitral

award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.

Article VII. The High Contracting Parties bind themselves not to make diplomatic representations in order to protect their nationals, or to refer a controversy to a court of international jurisdiction for that purpose, when the said nationals have had available the means to place their case before competent domestic courts of the respective state.

Article VIII. Neither recourse to pacific means for the solution of controversies, nor the recommendation of their use, shall, in the case of an armed attack, be ground for delaying the exercise of the right of individual or collective self-defense, as provided for in the Charter of the United Nations.

Chapter II. Procedures of Good Offices and Mediation

Article IX. The procedure of good offices consists in the attempt by one or more American Governments not parties to the controversy, or by one or more eminent citizens of any American State which is not a party to the controversy, to bring the parties together, so as to make it possible for them to reach an adequate solution between themselves.

Article X. Once the parties have been brought together and have resumed direct negotiations, no further action is to be taken by the states or citizens that have offered their good offices or have accepted an invitation to offer them; they may, however, by agreement between the parties, be present at the negotiations.

Article XI. The procedure of mediation consists in the submission of the controversy to one or more American Governments not parties to the controversy, or to one or more eminent citizens of any

American State not a party to the controversy. In either case the mediator or mediators shall be chosen by mutual agreement between the parties.

Article XII. The functions of the mediator or mediators shall be to assist the parties in the settlement of controversies in the simplest and most direct manner, avoiding formalities and seeking an acceptable solution. No report shall be made by the mediator and, so far as he is concerned, the proceedings shall be wholly confidential.

Article XIII. In the event that the High Contracting Parties have agreed to the procedure of mediation but are unable to reach an agreement within two months on the selection of the mediator or mediators, or no solution to the controversy has been reached within five months after mediation has begun, the parties shall have recourse without delay to any one of the other procedures of peaceful settlement established in the present Treaty.

Article XIV. The High Contracting Parties may offer their mediation, either individually or jointly, but they agree not to do so while the controversy is in process of settlement by any of the other procedures established in the present Treaty.

Chapter III. Procedure of Investigation and Conciliation

Article XV. The procedure of investigation and conciliation consists in the submission of the controversy to a Commission of Investigation and Conciliation, which shall be established in accordance with the provisions established in subsequent articles of the present Treaty, and which shall function within the limitations prescribed therein.

Article XVI. The party initiating the procedure of investigation and conciliation shall request the

Council of the Organization of American States to convoke the Commission of Investigation and Conciliation. The Council for its part shall take immediate steps to convoke it.

Once the request to convoke the Commision has been received, the controversy between the parties shall immediately be suspended, and the parties shall refrain from any act that might make conciliation more difficult. To that end, at the request of one of the parties, the Coucil of the Organization of American States may, pending the convocation of the Commission, make appropriate recommendations to the parties.

Article XVII. Each of the High Contracting Parties may appoint, by means of a bilateral agreement consisting of a simple exchange of notes with each of the other signatories, two members of the Commission of Investigation and Conciliation, only one of whom may be of its own nationality. The fifth member, who shall perform the functions of chairman, shall be selected immediately by common agreement of the members thus appointed.

Any one of the contracting parties may remove members whom it has appointed, whether nationals or aliens; at the same time it shall appoint the successor. If this is not done, the removal shall be considered as not having been made. The appointments and substitutions shall be registered with the Pan American Union, which shall endeavor to ensure that the commissions maintain their full complement of five members.

Article XVIII. Without prejudice to the provisions of the foregoing article, the Pan American Union shall draw up a permanent panel of American conciliators, to be made up as follows:

(*a*) Each of the High Contracting Parties shall appoint, for three-year periods, two of their

nationals who enjoy the highest reputation for fairness, competence and integrity;

(*b*) The Pan American Union shall request of the candidates notice of their formal acceptance, and it shall place on the panel of conciliators the names of the persons who so notify it;

(*c*) The governments may, at any time, fill vacancies occurring among their appointees; and they may reappoint their members.

ARTICLE XIX. In the event that a controversy should arise between two or more American States that have not appointed the Commission referred to in Article XVII, the following procedure shall be observed:

(*a*) Each party shall designate two members from the permanent panel of American conciliators, who are not of the same nationality as the appointing party.

(*b*) These four members shall in turn choose a fifth member, from the permanent panel, not of the nationality of either party.

(*c*) If, within a period of thirty days following the notification of their selection, the four members are unable to agree upon a fifth member, they shall each separately list the conciliators composing the permanent panel, in order of their preference, and upon comparison of the lists so prepared, the one who first receives a majority of votes shall be declared elected. The person so elected shall perform the duties of chairman of the Commission.

ARTICLE XX. In convening the Commisison of Investigation and Conciliation, the Council of the Organization of American States shall determine the place where the Commission shall meet. Thereafter, the Commission may determine the place or places in

which it is to function, taking into account the best facilities for the performance of its work.

Article XXI. When more than two states are involved in the same controversy, the states that hold similar points of view shall be considered as a single party. If they have different interests they shall be entitled to increase the number of conciliators in order that all parties may have equal representation. The chairman shall be elected in the manner set forth in Article XIX.

Article XXII. It shall be the duty of the Commission of Investigation and Conciliation to clarify the points in dispute between the parties and to endeavor to bring about an agreement between them upon mutually acceptable terms. The Commission shall institute such investigations of the facts involved in the controversy as it may deem necessary for the purpose of proposing acceptable bases of settlement.

Article XXIII. It shall be the duty of the parties to facilitate the work of the Commission and to supply it, to the fullest extent possible, with all useful documents and information, and also to use the means at their disposal to enable the Commission to summon and hear witnesses or experts and perform other tasks in the territories of the parties, in conformity with their laws.

Article XXIV. During the proceedings before the Commission, the parties shall be represented by plenipotentiary delegates or by agents, who shall serve as intermediaries between them and the Commission. The parties and the Commission may use the services of technical advisers and experts.

Article XXV. The Commission shall conclude its work within a period of six months from the date of its installation; but the parties may, by mutual agreement, extend the period.

Article XXVI. If, in the opinion of the parties,

the controversy relates exclusively to questions of fact, the Commission shall limit itself to investigating such questions, and shall conclude its activities with an appropriate report.

Article XXVII. If an agreement is reached by conciliation, the final report of the Commission shall be limited to the text of the agreement and shall be published after its transmittal to the parties, unless the parties decide otherwise. If no agreement is reached, the final report shall contain a summary of the work of the Commission; it shall be delivered to the parties, and shall be published after the expiration of six months unless the parties decide otherwise. In both cases, the final report shall be adopted by a majority vote.

Article XXVIII. The reports and conclusions of the Commission of Investigation and Conciliation shall not be binding upon the parties, either with respect to the statement of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.

Article XXIX. The Commission of Investigation and Conciliation shall transmit to each of the parties, as well as to the Pan American Union, certified copies of the minutes of its proceedings. These minutes shall not be published unless the parties so decide.

Article XXX. Each member of the Commission shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree thereon, the Council of the Organization shall determine the remuneration. Each government shall pay its own expenses and an equal share of the common expenses of the Commission, including the aforementioned remunerations.

Chapter IV. Judicial Procedure

Article XXXI. In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

(*a*) The interpretation of a treaty;

(*b*) Any question of international law;

(*c*) The existence of any fact which, if established, would constitute the breach of an international obligation;

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

Article XXXII. When the conciliation procedure previously established in the present Treaty or by agreement of the parties does not lead to a solution, and the said parties have not agreed upon an arbitral procedure, either of them shall be entitled to have recourse to the International Court of Justice in the manner prescribed in Article 40 of the Statute thereof. The Court shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of the said Statute.

Article XXXIII. If the parties fail to agree as to whether the Court has jurisdiction over the controversy, the Court itself shall first decide that question.

Article XXXIV. If the Court, for the reasons set forth in Articles V, VI and VII of this Treaty, declares itself to be without jurisdiction to hear the controversy, such controversy shall be declared ended.

Article XXXV. If the Court for any other reason declares itself to be without jurisdiction to hear and adjudge the controversy, the High Contracting Parties obligate themselves to submit it to arbitration, in accordance with the provisions of Chapter Five of this Treaty.

Article XXXVI. In the case of controversies submitted to the judicial procedure to which this Treaty refers, the decision shall devolve upon the full Court, or, if the parties so request, upon a special chamber in conformity with Article 26 of the Statute of the Court. The parties may agree, moreover, to have the controversy decided *ex aequo et bono*.

Article XXXVII. The procedure to be followed by the Court shall be that established in the Statute thereof.

Chapter V. Procedure of Arbitration

Article XXXVIII. Notwithstanding the provisions of Chapter Four of this Treaty, the High Contracting Parties may, if they so agree, submit to arbitration differences of any kind, whether juridical or not, that have arisen or may arise in the future between them.

Article XXXIX. The Arbitral Tribunal to which a controversy is to be submitted shall, in the cases contemplated in Articles XXXV and XXXVIII of the present Treaty, be constituted in the following manner, unless there exists an agreement to the contrary.

Article XL. (1) Within a period of two months after notification of the decision of the Court in the case provided for in Article XXXV, each party shall name one arbiter of recognized competence in questions of international law and of the highest integrity, and shall transmit the designation to the Council of the Organization. At the same time, each party

shall present to the Council a list of ten jurists chosen from among those on the general panel of members of the Permanent Court of Arbitration of The Hague who do not belong to its national group and who are willing to be members of the Arbitral Tribunal.

(2) The Council of the Organization shall, within the month following the presentation of the lists, proceed to establish the Arbitral Tribunal in the following manner:

(*a*) If the lists presented by the parties contain three names in common, such persons, together with the two directly named by the parties, shall constitute the Arbitral Tribunal;

(*b*) In case these lists contain more than three names in common, the three arbiters needed to complete the Tribunal shall be selected by lot;

(*c*) In the circumstances envisaged in the two preceding clauses, the five arbiters designated shall choose one of their number as presiding officer;

(*d*) If the lists contain only two names in common, such candidates and the two arbiters directly selected by the parties shall by common agreement choose the fifth arbiter, who shall preside over the Tribunal. The choice shall devolve upon a jurist on the aforesaid general panel of the Permanent Court of Arbitration of The Hague who has not been included in the lists drawn up by the parties;

(*e*) If the lists contain only one name in common, that person shall be a member of the Tribunal, and another name shall be chosen by lot from among the eighteen jurists remaining on the above-mentioned lists. The presiding officer shall be elected in accordance with the procedure established in the preceding clause;

(*f*) If the lists contain no names in common, one arbiter shall be chosen by lot from each of the lists; and the fifth arbiter, who shall act as presiding officer, shall be chosen in the manner previously indicated;

(*g*) If the four arbiters cannot agree upon a fifth arbiter within one month after the Council of the Organization has notified them of their appointment, each of them shall separately arrange the list of jurists in the order of their preference and, after comparison of the lists so formed, the person who first obtains a majority vote shall be declared elected.

Article XLI. The parties may by mutual agreement establish the Tribunal in the manner they deem most appropriate; they may even select a single arbiter, designating in such case a chief of state, an eminent jurist, or any court of justice in which the parties have mutual confidence.

Article XLII. When more than two states are involved in the same controversy, the states defending the same interests shall be considered as a single party. If they have opposing interests they shall have the right to increase the number of arbiters so that all parties may have equal representation. The presiding officer shall be selected by the method established in Article XL.

Article XLIII. The parties shall in each case draw up a special agreement clearly defining the specific matter that is the subject of the controversy, the seat of the Tribunal, the rules of procedure to be observed, the period within which the award is to be handed down, and such other conditions as they may agree upon among themselves.

If the special agreement cannot be drawn up within three months after the date of the installation of the Tribunal, it shall be drawn up by the International

Court of Justice through summary procedure, and shall be binding upon the parties.

ARTICLE XLIV. The parties may be represented before the Arbitral Tribunal by such persons as they may designate.

ARTICLE XLV. If one of the parties fails to designate its arbiter and present its list of candidates within the period provided for in Article XL, the other party shall have the right to request the Council of the Organization to establish the Arbitral Tribunal. The Council shall immediately urge the delinquent party to fulfill its obligations within an additional period of fifteen days, after which time the Council itself shall establish the Tribunal in the following manner:

(*a*) It shall select a name by lot from the list presented by the petitioning party.

(*b*) It shall choose, by absolute majority vote, two jurists from the general panel of the Permanent Court of Arbitration of The Hague who do not belong to the national group of any of the parties.

(*c*) The three persons so designated, together with the one directly chosen by the petitioning party, shall select the fifth arbiter, who shall act as presiding officer, in the manner provided for in Article XL.

(*d*) Once the Tribunal is installed, the procedure established in article XLIII shall be followed.

ARTICLE XLVI. The award shall be accompanied by a supporting opinion, shall be adopted by a majority vote, and shall be published after notification thereof has been given to the parties. The dissenting arbiter or arbiters shall have the right to state the grounds for their dissent.

The award, once it is duly handed down and made known to the parties, shall settle the controversy

definitively, shall not be subject to appeal, and shall be carried out immediately.

Article XLVII. Any differences that arise in regard to the interpretation or execution of the award shall be submitted to the decision of the Arbitral Tribunal that rendered the award.

Article XLVIII. Within a year after notification thereof, the award shall be subject to review by the same Tribunal at the request of one of the parties, provided a previously existing fact is discovered unknown to the Tribunal and to the party requesting the review, and provided the Tribunal is of the opinion that such fact might have a decisive influence on the award.

Article XLIX. Every member of the Tribunal shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree on the amount, the Council of the Organization shall determine the remuneration. Each Government shall pay its own expenses and an equal share of the common expenses of the Tribunal, including the aforementioned remunerations.

Chapter VI. Fulfillment of Decisions

Article L. If one of the High Contracting Parties should fail to carry out the obligations imposed upon it by a decision of the International Court of Justice or by an arbitral award, the other party or parties concerned shall, before resorting to the Security Council of the United Nations, propose a Meeting of Consultation of Ministers of Foreign Affairs to agree upon appropriate measures to ensure the fulfillment of the judicial decision or arbitral award.

Chapter VII. Advisory Opinions

Article LI. The parties concerned in the solution of a controversy may, by agreement, petition the General Assembly or the Security Council of the United Nations to request an advisory opinion of the International Court of Justice on any juridical question.

The petition shall be made through the Council of the Organization of American States.

Chapter VIII. Final Provisions

Article LII. The present Treaty shall be ratified by the High Contracting Parties in accordance with their constitutional procedures. The original instrument shall be deposited in the Pan American Union, which shall transmit an authentic certified copy to each Government for the purpose of ratification. The instruments of ratification shall be deposited in the archives of the Pan American Union, which shall notify the signatory governments of the deposit. Such notification shall be considered as an exchange of ratifications.

Article LIII. This Treaty shall come into effect between the High Contracting Parties in the order in which they deposit their respective ratifications.

Article LIV. Any American State which is not a signatory to the present Treaty, or which has made reservations thereto, may adhere to it, or may withdraw its reservations in whole or in part, by transmitting an official instrument to the Pan American Union, which shall notify the other High Contracting Parties in the manner herein established.

Article LV. Should any of the High Contracting Parties make reservations concerning the present Treaty, such reservations shall, with respect to the

state that makes them, apply to all signatory states on the basis of reciprocity.

ARTICLE LVI. The present Treaty shall remain in force indefinitely, but may be denounced upon one year's notice, at the end of which period it shall cease to be in force with respect to the state denouncing it, but shall continue in force for the remaining signatories. The denunciation shall be addressed to the Pan American Union, which shall transmit it to the other Contracting Parties.

The denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification.

ARTICLE LVII. The present Treaty shall be registered with the Secretariat of the United Nations through the Pan American Union.

ARTICLE LVIII. As this Treaty comes into effect through the successive ratifications of the High Contracting Parties, the following treaties, conventions and protocols shall cease to be in force with respect to such parties:

Treaty to Avoid or Prevent Conflicts between the American States, of May 3, 1923;

General Convention of Inter-American Conciliation, of January 5, 1929;

General Treaty of Inter-American Arbitration and Additional Protocol of Progressive Arbitration, of January 5, 1929;

Additional Protocol to the General Convention of Inter-American Conciliation, of December 26, 1933;

Anti-War Treaty of Non-Aggression and Conciliation, of October 10, 1933;

Convention to Coordinate, Extend and Assure the Fulfillment of the Existing Treaties between the American States, of December 23, 1936;

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Inter-American Treaty on Good Offices and Mediation, of December 23, 1936;

Treaty on the Prevention of Controversies, of December 23, 1936.

ARTICLE LIX. The provisions of the foregoing Article shall not apply to procedures already initiated or agreed upon in accordance with any of the above-mentioned international instruments.

ARTICLE LX. The present Treaty shall be called the "PACT OF BOGOTÁ."

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having deposited their full powers, found to be in good and due form, sign the present Treaty, in the name of their respective Governments, on the dates appearing below their signatures.

Done at the City of Bogotá, in four texts, in the English, French, Portuguese and Spanish languages respectively, on the thirtieth day of April, nineteen hundred forty-eight.

[The treaty was signed on behalf of 21 American republics.]

RESERVATIONS

Argentina

"The Delegation of the Argentine Republic, on signing the American Treaty on Pacific Settlement (Pact of Bogotá), makes reservations in regard to the following articles, to which it does not adhere:

(1) VII, concerning the protection of aliens;

(2) Chapter Four (Articles XXXI to XXXVII), Judicial Procedure;

(3) Chapter Five (Articles XXXVIII to XLIX), Procedure of Arbitration;

(4) Chapter Six (Article L), Fulfillment of Decisions.

Arbitration and judicial procedure have, as

institutions, the firm adherence of the Argentine Republic, but the Delegation cannot accept the form in which the procedures for their application have been regulated, since, in its opinion, they should have been established only for controversies arising in the future and not originating in or having any relation to causes, situations or facts existing before the signing of this instrument. The compulsory execution of arbitral or judicial decisions and the limitation which prevents the states from judging for themselves in regard to matters that pertain to their domestic jurisdiction in accordance with Article V are contrary to Argentine tradition. The protection of aliens, who in the Argentine Republic are protected by its Supreme Law to the same extent as the nationals, is also contrary to that tradition."

Bolivia

"The Delegation of Bolivia makes a reservation with regard to Article VI, inasmuch as it considers that pacific procedures may also be applied to controversies arising from matters settled by arrangement between the Parties, when the said arrangement affects the vital interests of a state."

Ecuador

"The Delegation of Ecuador, upon signing this Pact, makes an express reservation with regard to Article VI and also every provision that contradicts or is not in harmony with the principles proclaimed by or the stipulations contained in the Charter of the United Nations, the Charter of the Organization of American States, or the Constitution of the Republic of Ecuador."

United States of America

"1. The United States does not undertake as the complainant State to submit to the International

Court of Justice any controversy which is not considered to be properly within the jurisdiction of the Court.

2. The submission on the part of the United States of any controversy to arbitration, as distinguished from judicial settlement, shall be dependent upon the conclusion of a special agreement between the parties to the case.

3. The acceptance by the United States of the jurisdiction of the International Court of Justice as compulsory *ipso facto* and without special agreement, as provided in this Treaty, is limited by any jurisdictional or other limitations contained in any Declaration deposited by the United States under Article 36, paragraph 4, of the Statute of the Court, and in force at the time of the submission of any case.

4. The Government of the United States cannot accept Article VII relating to diplomatic protection and the exhaustion of remedies. For its part, the Government of the United States maintains the rules of diplomatic protection, including the rule of exhaustion of local remedies by aliens, as provided by international law."

Paraguay

"The Delegation of Paraguay makes the following reservation:

Paraguay stipulates the prior agreement of the parties as a prerequisite to the arbitration procedure established in this Treaty for every question of a non-juridical nature affecting national sovereignty and not specifically agreed upon in treaties now in force."

Peru

"The Delegation of Peru makes the following reservations:

1. Reservation with regard to the second part of

Article V, because it considers that domestic jurisdiction should be defined by the state itself.

2. Reservation with regard to Article XXXIII and the pertinent part of Article XXXIV, inasmuch as it considers that the exceptions of *res judicata*, resolved by settlement between the parties or governed by agreements and treaties in force, determine, in virtue of their objective and peremptory nature, the exclusion of these cases from the application of e ery procedure.

3. Reservation with regard to Article XXXV, in the sense that, before arbitration is resorted to, there may be, at the request of one of the parties, a meeting of the Organ of Consultation, as established in the Charter of the Organization of American States.

4. Reservation with regard to Article XLV, because it believes that arbitration set up without the participation of one of the parties is in contradiction with its constitutional provisions."

Nicaragua

"The Nicaraguan Delegation, on giving its approval to the American Treaty on Pacific Settlement (Pact of Bogotá) wishes to record expressly that no provisions contained in the said Treaty may prejudice any position assumed by the Government of Nicaragua with respect to arbitral decisions the validity of which it has contested on the basis of the principles of international law, which clearly permit arbitral decisions to be attacked when they are adjudged to be null or invalidated. Consequently, the signature of the Nicaraguan Delegation to the Treaty in question cannot be alleged as an acceptance of any arbitral decisions that Nicaragua has contested and the validity of which is not certain.

Hence the Nicaraguan Delegation reiterates the statement made on the 28th of the current month on

approving the text of the above mentioned Treaty in Committee III."

3. Treaty of Economic, Social and Cultural Collaboration and Collective Self-defense, Brussels, 17 March 1948

NOTE. On 21 January 1948, the United Kingdom and France began negotiations with Belgium, the Netherlands and Luxembourg concerning a closer consolidation of western Europe. Representatives of the five countries met at Brussels from 4 March to 17 March 1948, and signed this treaty. By 25 August 1948, all five of the signatories had deposited their ratifications at Brussels, and the treaty entered into force on that date.

The first meeting of the Consultative Council provided for by Article VII of the treaty took place on 17 April 1948; it was decided that the Council, composed of the Ministers of Foreign Affairs of the five signatories, should meet at least once every three months. The Council has established in London a Permanent Commission composed of diplomatic representatives, a secretariat to assist the Permanent Commission, a Permanent Military Committee to examine common defense problems within the scope of the treaty, and an Economic Committee. On 4 October 1948, a Commander in Chief's Committee was established, composed of Field Marshal Viscount Montgomery, Chairman; General de Lattre de Tassigny, Commander in Chief Land Forces; Air Marshal Sir James Robb, Commander in Chief Air Forces; and Vice Admiral Jaujard, Flag Officer as Naval Representative.

(British Treaty Series, No. 1 (1949), Cmd. 7599; 18 Department of State Bulletin, 600.)

His Royal Highness the Prince Regent of Belgium, the President of the French Republic, President of the French Union, Her Royal Highness the Grand Duchess of Luxembourg, Her Majesty the Queen of the Netherlands and His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas,

Resolved

To reaffirm their faith in fundamental human rights, in the dignity and worth of the human person and in the other ideals proclaimed in the Charter of the United Nations;

To fortify and preserve the principles of democracy, personal freedom and political liberty, the constitutional traditions and the rule of law, which are their common heritage;

To strengthen, with these aims in view, the economic, social and cultural ties by which they are already united;

To co-operate loyally and to co-ordinate their efforts to create in western Europe a firm basis for European economic recovery;

To afford assistance to each other, in accordance with the Charter of the United Nations, in maintaining international peace and security and in resisting any policy of aggression;

To take such steps as may be held to be necessary in the event of a renewal by Germany of a policy of aggression;

To associate progressively in the pursuance of these aims other States inspired by the same ideals and animated by the like determination;

Desiring for these purposes to conclude a treaty for collaboration in economic, social and cultural matters and for collective self-defence;

Have appointed as their Plenipotentiaries:

His Royal Highness the Prince Regent of Belgium
His Excellency, Mr. Paul-Henri Spaak, Prime Minister, Minister of Foreign Affairs, and
His Excellency Mr. Gaston Eyskens, Minister of Finance.

The President of the French Republic, President of the French Union.
His Excellency Mr. Georges Bidault, Minister of Foreign Affairs, and
His Excellency Mr. Jean de Hauteclocque, Ambassador Extraordinary and Plenipotentiary of the French Republic in Brussels.

Her Royal Highness the Grand Duchess of Luxembourg
His Excellency Mr. Joseph Bech, Minister of Foreign Affairs, and

His Excellency Mr. Robert Als, Envoy Extraordinary and Minister Plenipotentiary of Luxembourg in Brussels,

Her Majesty the Queen of the Netherlands

His Excellency Baron C. G. W. H. van Boetzelaer van Oosterhout, Minister of Foreign Affairs, and

His Excellency Baron Binnert Phillip van Harinxma thoe Slooton, Ambassado Extraordinary and Plenipotentiary of the Netherlands in Brussels,

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas for the United Kingdom of Great Britain and Northern Ireland

The Right Honourable Ernest Bevin, Member of Parliament, Principal Secretary of State for Foreign Affairs, and

His Excellency Sir George William Rendel, K.C.M.G., Ambassador Extraordinary and Plenipotentiary of His Britannic Majesty in Brussels,

who, having exhibited their full powers found in good and due form, have agreed as follows:

Article I. Convinced of the close community of their interests and of the necessity of uniting in order to promote the economic recovery of Europe, the High Contracting Parties will so organize and co-ordinate their economic activities as to produce the best possible results, by the elimination of conflict in their economic policies, the co-ordination of production and the development of commercial exchanges.

The co-operation provided for in the preceding paragraph, which will be effected through the Consultative Council referred to in Article VII as well as through other bodies, shall not involve any duplication of, or prejudice to, the work of other economic

organizations in which the High Contracting Parties are or may be represented but shall on the contrary assist the work of those organizations.

ARTICLE II. The High Contracting Parties will make every effort in common, both by direct consultation and in specialized agencies, to promote the attainment of a higher standard of living by their peoples and to develop on corresponding lines the social and other related services of their countries.

The High Contracting Parties will consult with the object of achieving the earliest possible application of recommendations of immediate practical interest, relating to social matters, adopted with their approval in the specialized agencies.

They will endeavour to conclude as soon as possible conventions with each other in the sphere of social security.

ARTICLE III. The High Contracting Parties will make every effort in common to lead their peoples towards a better understanding of the principles which form the basis of their common civilization and to promote cultural exchanges by conventions between themselves or by other means.

ARTICLE IV. If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the party so attacked all the military and other aid and assistance in their power.

ARTICLE V. All measures taken as a result of the preceding Article shall be immediately reported to the Security Council. They shall be terminated as soon as the Security Council has taken the measures necessary to maintain or restore international peace and Security.

The present Treaty does not prejudice in any way

the obligations of the High Contracting Parties under the provisions of the Charter of the United Nations. It shall not be interpreted as affecting in any way the authority and responsibility of the Security Council under the Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

ARTICLE VI. The High Contracting Parties declare, each so far as he is concerned, that none of the international engagements now in force between him and any other of the High Contracting Parties or any third State is in conflict with the provisions of the present Treaty.

None of the High Contracting Parties will conclude any alliance or participate in any coalition directed against any other of the High Contracting Parties.

ARTICLE VII. For the purpose of consulting together on all the questions dealt with in the present Treaty, the High Contracting Parties will create a Consultative Council, which shall be so organized as to be able to exercise its functions continuously. The Council shall meet at such times as it shall deem fit.

At the request of any of the High Contracting Parties, the Council shall be immediately convened in order to permit the High Contracting Parties to consult with regard to any situation which may constitute a threat to peace, in whatever area this threat should arise; with regard to the attitude to be adopted and the steps to be taken in case of a renewal by Germany of an aggressive policy; or with regard to any situation constituting a danger to economic stability.

ARTICLE VIII. In pursuance of their determination to settle disputes only by peaceful means, the High Contracting Parties will apply to disputes between themselves the following provisions:

The High Contracting Parties will, while the

present Treaty remains in force, settle all disputes falling within the scope of Article 36, paragraph 2, of the Statute of the International Court of Justice by referring them to the Court, subject only, in the case of each of them, to any reservation already made by that Party when accepting this clause for compulsory jurisdiction to the extent that that Party may maintain the reservation.

In addition, the High Contracting Parties will submit to conciliation all disputes outside the scope of Article 36, paragraph 2, of the Statute of the International Court of Justice.

In the case of a mixed dispute involving both questions for which conciliation is appropriate and other questions for which judicial settlement is appropriate, any Party to the dispute shall have the right to insist that the judicial settlement of the legal questions shall precede conciliation.

The preceding provisions of this Article in no way affect the application of relevant provisions or agreements prescribing some other method of pacific settlement.

Article IX. The High Contracting Parties may, by agreement, invite any other State to accede to the present Treaty on conditions to be agreed between them and the State so invited.

Any State so invited may become a Party to the Treaty by depositing an instrument of accession with the Belgian Government.

The Belgian Government will inform each of the High Contracting Parties of the deposit of each instrument of accession.

Article X. The present Treaty shall be ratified and the instruments of ratification shall be deposited as soon as possible with the Belgian Government.

It shall enter into force on the date of the deposit

of the last instrument of ratification and shall thereafter remain in force for fifty years.

After the expiry of the period of fifty years, each of the High Contracting Parties shall have the right to cease to be a party thereto provided that he shall have previously given one year's notice of denunciation to the Belgian Government.

The Belgian Government shall inform the Governments of the other High Contracting Parties of the deposit of each instrument of ratification and of each notice of denunciation.

In witness whereof, the above-mentioned Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done at Brussels, tihs seventeenth day of March 1948, in English and French, each text being equally authentic, in a single copy which shall remain deposited in the archives of the Belgian Government and of which certified copies shall be transmitted by that Government to each of the other signatories.

4. North Atlantic Treaty, Washington, 4 April 1949

NOTE. By a resolution of 11 June 1948 (19 Department of State Bulletin 79, the Senate of the United States envisaged the "progressive development of regional and other collective arrangements for individual and collective self-defense in accordance with the purposes, principles, and provisions of the United Nations Charter," and the "association of the United States" with such regional and collective arrangements. Negotiations begun in July 1948 led to the signature of this treaty on 4 April 1949 by the Secretary of State of the United States and the Foreign Ministers of Canada, the United Kingdom, France, Belgium, the Netherlands, Luxembourg, Norway, Italy, Denmark, Iceland, and Portugal.

On 1 August 1949, ratifications of the treaty had been deposited by Belgium, Canada, the United Kingdom, and the United States.

(Department of State Publication 3464.)

PREAMBLE

The Parties to this Treaty reaffirm their faith in the purposes and principles of the Charter of the

United Nations and their desire to live in peace with all peoples and all governments.

They are determined to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law.

They seek to promote stability and well-being in the North Atlantic area.

They are resolved to unite their efforts for collective defense and for the preservation of peace and security.

They therefore agree to this North Atlantic Treaty:

ARTICLE 1. The Parties undertake, as set forth in the Charter of the United Nations, to settle any international disputes in which they may be involved by peaceful means in such a manner that international peace and security, and justice, are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

ARTICLE 2. The Parties will contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions, by bringing about a better understanding of the principles upon which these institutions are founded, and by promoting conditions of stability and well-being. They will seek to eliminate conflict in their international economic policies and will encourage economic collaboration between any or all of them.

ARTICLE 3. In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.

ARTICLE 4. The Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened.

ARTICLE 5. The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

ARTICLE 6. For the purpose of Article 5 an armed attack on one or more of the Parties is deemed to include an armed attack on the territory of any of the Parties in Europe or North America, on the Algerian departments of France, on the occupation forces of any Party in Europe, on the islands under the jurisdiction of any Party in the North Atlantic area north of the Tropic of Cancer or on the vessels or aircraft in this area of any of the Parties.

ARTICLE 7. This Treaty does not affect, and shall not be interpreted as affecting, in any way the rights and obligations under the Charter of the Parties which are members of the United Nations, or the

primary responsibility of the Security Council for the maintenance of international peace and security.

ARTICLE 8. Each Party declares that none of the international engagements now in force between it and any other of the Parties or any third state is in conflict with the provisions of this Treaty, and undertakes not to enter into any international engagement in conflict with this Treaty.

ARTICLE 9. The Parties hereby establish a council, on which each of them shall be represented, to consider matters concerning the implementation of this Treaty. The council shall be so organized as to be able to meet promptly at any time. The council shall set up such subsidiary bodies as may be necessary; in particular it shall establish immediately a defense committee which shall recommend measures for the implementation of Articles 3 and 5.

ARTICLE 10. The Parties may, by unanimous agreement, invite any other European state in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area to accede to this Treaty. Any state so invited may become a party to the Treaty by depositing its instrument of accession with the Government of the United States of America. The Government of the United States of America will inform each of the Parties of the deposit of each such instrument of accession.

ARTICLE 11. This Treaty shall be ratified and its provisions carried out by the Parties in accordance with their respective constitutional processes. The instruments of ratification shall be deposited as soon as possible with the Government of the United States of America, which will notify all the other signatories of each deposit. The Treaty shall enter into force between the states which have ratified it as soon as

the ratifications of the majority of the signatories, including the ratifications of Belgium, Canada, France, Luxembourg, the Netherlands, the United Kingdom and the United States, have been deposited and shall come into effect with respect to other states on the date of the deposit of their ratifications.

ARTICLE 12. After the Treaty has been in force for ten years, or at any time thereafter, the Parties shall, if any of them so request, consult together for the purpose of reviewing the Treaty, having regard for the factors then affecting peace and security in the North Atlantic area, including the development of universal as well as regional arrangements under the Charter of the United Nations for the maintenance of international peace and security.

ARTICLE 13. After the Treaty has been in force for twenty years, any Party may cease to be a party one year after its notice of denunciation has been given to the Government of the United States of America, which will inform the Governments of the other Parties of the deposit of each notice of denunciation.

ARTICLE 14. This Treaty, of which the English and French texts are equally authentic, shall be deposited in the archives of the Government of the United States of America. Duly certified copies thereof will be transmitted by that Government to the Governments of the other signatories.

In witness whereof, the undersigned plenipotentiaries have signed this Treaty.

Done at Washington, the fourth day of April, 1949.

[Signatures omitted.]

5. Revised General Act For the Pacific Settlement of International Disputes, Lake Success, 28 April 1949

NOTE. On 28 April 1949, the General Assembly of the United Nations adopted various amendments to the General Act adopted by the Assembly of the League of Nations on 26 September 1928, with a view to restoring the

General Act to its "original efficacy"; and the Secretary General was instructed to prepare a revised text including the amendments to be open to accession by States. United Nations Document A/900, 31 May 1949, p. 10. Twenty States had acceded to the original Act, the text of which is published in 93 League of Nations Treaty Series, p. 343; 4 Hudson, International Legislation, p. 2529.

[United Nations Document—]

6. Statute of the Council of Europe, London, 5 May 1949

NOTE. The Consultative Council created by the Treaty of Brussels of 17 March 1948, decided on 28 January 1949, that a Council of Europe should be established. The Statute of the Council was signed at London on 5 May 1949, by representatives of Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the United Kingdom. On 1 July 1949, the Statute had not been brought into force. A Preparatory Commission of the Council of Europe was also created on 5 May 1949 to enable the Council to operate as soon as the Statute enters into force [British Treaty Series, No. 32 (1949), Cmd. 7687].

[British Command Paper 7686.]

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the French Republic, the Irish Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom of Norway, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

Convinced that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation;

Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy;

Believing that, for the maintenance and further realisation of these ideals and in the interests of economic and social progress, there is need of a closer unity between all like-minded countries of Europe;

Considering that, to respond to this need and to the expressed aspirations of their peoples in this regard, it is necessary forthwith to create an organi-

sation which will bring European States into closer association;

Have in consequence decided to set up a Council of Europe consisting of a Committee of representatives of Governments and of a Consultative Assembly, and have for this purpose adopted the following Statute:—

Chapter I. Aim of the Council of Europe

Article 1. (*a*) The aim of the Council of Europe is to achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress.

(*b*) This aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms.

(*c*) Participation in the Council of Europe shall not affect the collaboration of its Members in the work of the United Nations and of other international organisations or unions to which they are parties.

(*d*) Matters relating to National Defence do not fall within the scope of the Council of Europe.

Chapter II. Membership

Article 2. The Members of the Council of Europe are the Parties to this Statute.

Article 3. Every Member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the

realisation of the aim of the Council as specified in Chapter I.

Article 4. Any European State, which is deemed to be able and willing to fulfil the provisions of Article 3, may be invited to become a Member of the Council of Europe by the Committee of Ministers. Any State so invited shall become a Member on the deposit on its behalf with the Secretary-General of an instrument of accession to the present Statute.

Article 5. (*a*) In special circumstances, a European country, which is deemed to be able and willing to fulfil the provisions of Article 3, may be invited by the Committee of Ministers to become an Associate Member of the Council of Europe. Any country so invited shall become an Associate Member on the deposit on its behalf with the Secretary-General of an instrument accepting the present Statute. An Associate Member shall be entitled to be represented in the Consultative Assembly only.

(*b*) The expression "Member" in this Statute includes an Associate Member except when used in connexion with representation on the Committee of Ministers.

Article 6. Before issuing invitations under Articles 4 or 5 above, the Committee of Ministers shall determine the number of representatives on the Consultative Assembly to which the proposed Member shall be entitled and its proportionate financial contribution.

Article 7. Any Member of the Council of Europe may withdraw by formally notifying the Secretary-General of its intention to do so. Such withdrawal shall take effect at the end of the financial year in which it is notified, if the notification is given during the first nine months of that financial year. If the notification is given in the last three months of the

financial year, it shall take effect at the end of the next financial year.

Article 8. Any Member of the Council of Europe, which has seriously violated Article 3, may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such Member does not comply with this request, the Committee may decide that it has ceased to be a Member of the Council as from such date as the Committee may determine.

Article 9. The Committee of Ministers may suspend the right of representation on the Committee and on the Consultative Assembly of a Member, which has failed to fulfil its financial obligation, during such period as the obligation remains unfulfilled.

Chapter III. General

Article 10. The organs of the Council of Europe are:

(i) The Committee of Ministers;
(ii) The Consultative Assembly.

Both these organs shall be served by the Secretariat of the Council of Europe.

Article 11. The seat of the Council of Europe is at Strasbourg.

Article 12. The official languages of the Council of Europe are English and French. The rules of procedure of the Committee of Ministers and of the Consultative Assembly shall determine in what circumstances and under what conditions other languages may be used.

Chapter IV. Committee of Ministers

Article 13. The Committee of Ministers is the organ which acts on behalf of the Council of Europe in accordance with Articles 15 and 16.

Article 14. Each Member shall be entitled to

one representative on the Committee of Ministers and each representative shall be entitled to one vote. Representatives on the Committee shall be the Ministers for Foreign Affairs. When a Minister for Foreign Affairs is unable to be present or in other circumstances where it may be desirable, an alternate may be nominated to act for him, who shall, whenever possible, be a member of his Government.

Article 15. (*a*) On the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by Governments of a common policy with regard to particular matters. Its conclusions shall be communicated to Members by the Secretary-General.

(*b*) In appropriate cases, the conclusions of the Committee may take the form of recommendations to the Governments of Members, and the Committee may request the Government of Members to inform it of the action taken by them with regard to such recommendations.

Article 16. The Committee of Ministers shall, subject to the provisions of Articles 24, 28, 30, 32, 33 and 35, relating to the powers of the Consultative Assembly, decide with binding effect all matters relating to the internal organisation and arrangements of the Council of Europe. For this purpose the Committee of Ministers shall adopt such financial and administrative regulations as may be necessary.

Article 17. The Committee of Ministers may set up advisory and technical committees or commissions for such specific purposes as it may deem desirable.

Article 18. The Committee of Ministers shall

adopt its rules of procedure which shall determine amongst other things:—

(i) The quorum;

(ii) The method of appointment and term of office of its President;

(iii) The procedure for the admission of items to its agenda, including the giving of notice of proposals for resolutions; and

(iv) The notifications required for the nomination of alternates under Article 14.

Article 19. At each session of the Consultative Assembly the Committee of Ministers shall furnish the Assembly with statements of its activities, accompanied by appropriate documentation.

Article 20. (*a*) Resolutions of the Committee of Ministers relating to the following important matters, namely:

(i) Recommendations under Article 15 (*b*);

(ii) Questions under Article 19;

(iii) Questions under Article 21 (*a*) (i) and (*b*);

(iv) Questions under Article 33;

(v) Recommendations for the amendment of Articles 1 (*d*), 7, 15, 20 and 22; and

(vi) Any other question which the Committee may, by a resolution passed under (*d*) below, decide should be subject to a unanimous vote on account of its importance

require the unanimous vote of the representatives casting a vote, and of a majority of the representatives entitled to sit on the Committee.

(*b*) Questions arising under the rules of procedure or under the financial and administrative regulations may be decided by a simple majority vote of the representatives entitled to sit on the Committee.

(*c*) Resolutions of the Committee under Articles 4 and 5 require a two-thirds majority of all the representatives entitled to sit on the Committee.

(*d*) All other resolutions of the Committee, including the adoption of the Budget, of rules of procedure and of financial and administrative regulations, recommendations for the amendment of articles of this Statute, other than those mentioned in paragraph (*a*) (v) above, and deciding in case of doubt which paragraph of this Article applies, require a two-thirds majority of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee.

Article 21. (*a*) Unless the Committee decides otherwise, meetings of the Committee of Ministers shall be held—

(i) In private, and

(ii) At the seat of the Council.

(*b*) The Committee shall determine what information shall be published regarding the conclusions and discussions of a meeting held in private.

(*c*) The Committee shall meet before and during the beginning of every session of the Consultative Assembly and at such other times as it may decide.

Chapter V. The Consultative Assembly

Article 22. The Consultative Assembly is the deliberative organ of the Council of Europe. It shall debate matters within its competence under this Statute and present its conclusions, in the form of recommendations, to the Committee of Ministers.

Article 23. (*a*) The Consultative Assembly shall discuss, and may make recommendations upon, any matter within the aim and scope of the Council of Europe as defined in Chapter 1, which (i) is referred to it by the Committee of Ministers with a request for its opinion, or (ii) has been approved by the Committee for inclusion in the Agenda of the Assembly on the proposal of the latter.

(*b*) In taking decisions under (*a*), the Committee shall have regard to the work of other European inter-governmental organisations to which some or all of the Members of the Council are parties.

(*c*) The President of the Assembly shall decide, in case of doubt, whether any question raised in the course of the Session is within the Agenda of the Assembly approved under (*a*) above.

ARTICLE 24. The Consultative Assembly may, with due regard to the provisions of Article 38 (*d*), establish committees or commissions to consider and report to it on any matter which falls within its competence under Article 23, to examine and prepare questions on its agenda and to advise on all matters of procedure.

ARTICLE 25. (*a*) The Consultative Assembly shall consist of representatives of each Member appointed in such a manner as the Government of that Member shall decide. Each representative must be a national of the Member whom he represents, but shall not at the same time be a member of the Committee of Ministers.

(*b*) No representative shall be deprived of his position as such during a session of the Assembly without the agreement of the Assembly.

(*c*) Each representative may have a substitute who may, in the absence of the representative, sit, speak and vote in his place. The provisions of paragraph (*a*) above apply to the appointment of substitutes.

ARTICLE 26. The following States, on becoming Members, shall be entitled to the number of representatives given below:—

Belgium	6	Luxembourg	3
Denmark	4	Netherlands	6
France	18	Norway	4
Irish Republic	4	Sweden	6
Italy	18	United Kingdom	18

ARTICLE 27. The conditions under which the

Committee of Ministers collectively may be represented in the debates of the Consultative Assembly, or individual representatives on the Committee may address the Assembly, shall be determined by such rules of procedure on this subject as may be drawn up by the Committee after consultation with the Assembly.

ARTICLE 28. (*a*) The Consultative Assembly shall adopt its rules of procedure and shall elect from its members its President, who shall remain in office until the next ordinary session.

(*b*) The President shall control the proceedings but shall not take part in the debate or vote. The substitute of the representative who is President may sit, speak and vote in his place.

(*c*) The rules of procedure shall determine *inter alia:*

(i) The quorum;

(ii) The manner of the election and terms of office of the President and other officers;

(iii) The manner in which the agenda shall be drawn up and be communicated to representatives; and

(iv) The time and manner in which the names of representatives and their substitutes shall be notified.

ARTICLE 29. Subject to the provisions of Article 30, all resolutions of the Consultative Assembly, including resolutions:

(i) Embodying recommendations to the Committee of Ministers;

(ii) Proposing to the Committee matters for discussion in the Assembly;

(iii) Establishing committees or commissions;

(iv) Determining the date of commencement of its sessions;

(v) Determining what majority is required for resolutions in cases not covered by (i) to

(iv) above or determining cases of doubt as to what majority is required.

shall require a two-thirds majority of the representatives casting a vote.

Article 30. On matters relating to its internal procedure, which includes the election of officers, the nomination of persons to serve on committees and commissions and the adoption of rules of procedure, resolutions of the Consultative Assembly shall be carried by such majorities as the Assembly may determine in accordance with Article 29 (v).

Article 31. Debates on proposals to be made to the Committee of Ministers that a matter should be placed on the Agenda of the Consultative Assembly shall be confined to an indication of the proposed subject-matter and the reasons for and against its inclusion in the Agenda.

Article 32. The Consultative Assembly shall meet in ordinary session once a year, the date and duration of which shall be determined by the Assembly so as to avoid as far as possible overlapping with parliamentary sessions of Members and with sessions of the General Assembly of the United Nations. In no circumstances shall the duration of an ordinary session exceed one month unless both the Assembly and the Committee of Ministers concur.

Article 33. Ordinary sessions of the Consultative Assembly shall be held at the seat of the Council unless both the Assembly and the Committee of Ministers concur that it should be held elsewhere.

Article 34. The Committee of Ministers may convoke an extraordinary session of the Consultative Assembly at such time and place as the Committee, with the concurrence of the President of the Assembly, shall decide.

Article 35. Unless the Consultative Assembly

decides otherwise, its debates shall be conducted in public.

Chapter VI. The Secretariat

Article 36. (*a*) The Secretariat shall consist of a Secretary-General, a Deputy Secretary-General and such other staff as may be required.

(*b*) The Secretary-General and Deputy Secretary-General shall be appointed by the Consultative Assembly on the recommendation of the Committee of Ministers.

(*c*) The remaining staff of the Secretariat shall be appointed by the Secretary-General, in accordance with the administrative regulations.

(*d*) No member of the Secretariat shall hold any salaried office from any Government or be a member of the Consultative Assembly or of any national legislature or engage in any occupation incompatible with his duties.

(*e*) Every member of the staff of the Secretariat shall make a solemn declaration affirming that his duty is to the Council of Europe and that he will perform his duties conscientiously, uninfluenced by any national considerations, and that he will not seek or receive instructions in connexion with the performance of his duties from any Government or any authority external to the Council and will refrain from any action which might reflect on his position as an international official responsible only to the Council. In the case of the Secretary-General and the Deputy Secretary-General this declaration shall be made before the Committee, and in the case of all other members of the staff, before the Secretary-General.

(*f*) Every Member shall respect the exclusively international character of the responsibilities of the Secretary-General and the staff of the Secretariat and

not seek to influence them in the discharge of their responsibilities.

Article 37. (*a*) The Secretariat shall be located at the seat of the Council.

(*b*) The Secretary-General is responsible to the Committee of Ministers for the work of the Secretariat. Amongst other things, he shall, subject to Article 38 (*d*), provide such secretarial and other assistance as the Consultative Assembly may require.

Chapter VII. Finance

Article 38. (*a*) Each Member shall bear the expenses of its own representation in the Committee of Ministers and in the Consultative Assembly.

(*b*) The expenses of the Secretariat and all other common expenses shall be shared between all Members in such proportions as shall be determined by the Committee on the basis of the population of Members.

The contributions of an Associate Member shall be determined by the Committee.

(*c*) In accordance with the financial regulations, the budget of the Council shall be submitted annually by the Secretary-General for adoption by the Committee.

(*d*) The Secretary-General shall refer to the Committee requests from the Assembly which involve expenditure exceeding the amount already allocated in the Budget for the Assembly and its activities.

Article 39. The Secretary-General shall each year notify the Government of each Member of the amount of its contribution and each Member shall pay to the Secretary-General the amount of its contribution, which shall be deemed to be due on the date of its notification, not later than six months after that date.

Chapter VIII. Privileges and Immunities

Article 40. (*a*) The Council of Europe, representatives of Members and the Secretariat shall enjoy in the territories of its Members such privileges and immunities as are reasonably necessary for the fulfilment of their functions. These immunities shall include immunity for all representatives in the Consultative Assembly from arrest and all legal proceedings in the territories of all Members, in respect of words spoken and votes cast in the debates of the Assembly or its committees or commissions.

(*b*) The Members undertake as soon as possible to enter into an agreement for the purpose of fulfilling the provisions of paragraph (*a*) above. For this purpose the Committee of Ministers shall recommend to the Governments of Members the acceptance of an Agreement defining the privileges and immunities to be granted in the territories of all Members. In addition a special Agreement shall be concluded with the Government of the French Republic defining the privileges and immunities which the Council shall enjoy at its seat.

Chapter IX. Amendments

Article 41. (*a*) Proposals for the amendment of this Statute may be made in the Committee of Ministers or, in the conditions provided for in Article 23, in the Consultative Assembly.

(*b*) The Committee shall recommend and cause to be embodied in a Protocol those amendments which it considers to be desirable.

(*c*) An amending Protocol shall come into force when it has been signed and ratified on behalf of two-thirds of the Members.

(*d*) Notwithstanding the provisions of the preceding paragraphs of this Article, amendments to

Articles 23–35, 38 and 39 which have been approved by the Committee and by the Assembly, shall come into force on the date of the certificate of the Secretary-General, transmitted to the Governments of Members, certifying that they have been so approved. This paragraph shall not operate until the conclusion of the second ordinary session of the Assembly.

Chapter X. Final Provisions

Article 42. (*a*) This Statute shall be ratified. Ratifications shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland.

(*b*) The present Statute shall come into force as soon as seven instruments of ratification have been deposited. The Government of the United Kingdom shall transmit to all signatory Governments a certificate declaring that the Statute has entered into force, and giving the names of the Members of the Council of Europe on that date.

(*c*) Thereafter each other signatory shall become a party to this Statute as from the date of the deposit of its instrument of ratification.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Statute.

Done at London, this 5th day of May, 1949, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Government of the United Kingdom which shall transmit certified copies to the other signatory Governments.

II. TRIALS OF WAR CRIMINALS

1. International Military Tribunal for the Far East, Indictment No. 1, 29 April 1946 (Excerpts)

NOTE. On 19 January 1946, the Supreme Commander for the Allied Powers issued a proclamation establishing an International Military Tribunal for the Far East, and approved a Charter of the Tribunal. The texts of the proclamation and of the Charter as amended on 26 April 1946 were published in Naval War College, International Law Documents, 1946–47, pp. 317, 319. Nine members of the Tribunal were appointed by the Supreme Commander on 15 February 1946, "from the names submitted by the signatories to the Instrument of Surrender" of 2 September 1945 (Naval War College, International Law Documents, 1946–47, p. 139); and two additional members from India and the Philippines were later appointed.

Each of the Governments of the States whose nationals were members of the Tribunal appointed counsel. An indictment signed by these counsel was served on twenty-eight defendants and lodged with the Tribunal on 29 April 1946, in which these "nations" accused the defendants of crimes against peace, war crimes, crimes against humanity, and common plans or conspiracies to commit those crimes, as defined in the Charter of the Tribunal. Only those counts on which defendants were convicted are reproduced here.

(Department of State Publications 2613.)

THE UNITED STATES OF AMERICA, THE REPUBLIC OF CHINA, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE UNION OF SOVIET SOCIALIST REPUBLICS, THE COMMONWEALTH OF AUSTRALIA, CANADA, THE REPUBLIC OF FRANCE, THE KINGDOM OF THE NETHERLANDS, NEW ZEALAND, INDIA, AND THE COMMONWEALTH OF THE PHILIPPINES.

against

ARAKI, Sadao; DOHIHARA, Kenji; HASHIMOTO, Kingoro; HATA, Shunroku; HIRANUMA, Kiichiro; HIROTA, Koki; HOSHINO, Naoki; ITAGAKI, Seishiro; KAYA, Okinori; KIDO, Koichi; KIMURA, Heitaro; KOISO, Kuniaki; MATSUI, Iwane; MATSUOKA, Yosuke; MINAMI, Jiro; MUTO, Akira; NAGANO, Osami; OKA, Takasumi; OKAWA, Shumei;

OSHIMA, Hiroshi; SATO, Kenryo; SHIGEMITSU, Mamoru; SHIMADA, Shigetaro; SHIRATORI, Toshio; SUZUKI, Teiichi; TOGO, Shigenori; TOJO, Hideki; UMEZU, Yoshijiro.

Accused.

GROUP ONE: CRIMES AGAINST PEACE

The following counts charge Crimes against Peace, being acts for which it is charged that each of the persons named are individually responsible in accordance with Article 5 and particularly Article 5 (a) of the Charter of the International Military Tribunal for the Far East, and in accordance with International Law.

Count 1

All the accused together with other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by any person in execution of such plan.

The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries bordering thereon and islands therein, and for that purpose they conspired that Japan should alone or in combination with other countries having similar objects, or who could be induced or coerced to join therein, wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against any country or countries which might oppose that purpose. . . .

Count 27

All the accused, between the 18th September, 1931, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of China. . . .

Count 29

All the accused, between the 7th December, 1941, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the United States of America. . . .

Count 31

All the accused, between the 7th December, 1941, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the British Commonwealth of Nations. . . .

Count 32

All the accused, between the 7th December, 1941, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Kingdom of the Netherlands. . . .

Count 33

The accused ARAKI, DOHIHARA, HIRANUMA, HIROTA, HOSHINO, ITAGAKI, KIDO, MATSUOKA, MUTO, NAGANO, SHIGEMITSU and TOJO, on and after the 22nd September, 1940, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Republic of France. . . .

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Count 35

The same accused as in Count 25,[1] during the summer of 1938, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances, against the Union of Soviet Socialist Republics. . . .

Count 36

The same accused as in Count 26,[2] during the summer of 1939, waged a war of aggression and a war in violation of international law, treaties, agreements and assurances against the Mongolian People's Republic and the Union of Soviet Socialist Republics. . . .

GROUP THREE: OTHER CONVENTIONAL WAR CRIMES AND CRIMES AGAINST HUMANITY

The following Counts charge conventional War Crimes and Crimes against Humanity, being acts for which it is charged that each of the persons named are individually responsible, in accordance with Article 5 and particularly Article 5 (b) and (c) of the Charter of the International Military Tribunal for the Far East, and in accordance with International Law.

Count 54

The accused Dohihara, Hata, Hoshino, Itagaki, Kaya, Kido, Kimura, Koiso, Muto, Nagano, Oka, Oshima, Sato, Shigemitsu, Shimada, Suzuki, Togo, Tojo and Umezu, between the 7th December, 1941, and the 2nd September, 1945, ordered, authorised and permitted the commanders-in-chief and other persons mentioned in Count 53 to commit the

[1] Araki, Dohihara, Hata, Hiranuma, Hirota, Hoshino, Itagaki, Kido, Matsuoka, Matsui, Shigemitsu, Suzuki, and Togo.

[2] Araki, Dohihara, Hata, Hiranuma, Itagaki, Kido, Koiso, Matsui, Matsuoka, Muto, Suzuki, Togo, Tojo, and Umezu.

offences therein mentioned and thereby violated the laws of War.

In the case of the Republic of China the said orders, authorizations and permissions were given in a period beginning on the 18th September, 1931, and the following accused were responsible for the same in addition to those named above: Araki, Hashimoto, Hiranuma, Hirota, Matsui, Matsuoka, Minami.

Count 55

The accused Dohihara, Hata, Hoshino, Itagaki, Kaya, Kido, Kimura, Koiso, Muto, Nagano, Oka, Oshima, Sato, Shigemitsu, Shimada, Suzuki, Togo, Tojo and Umezu, between the 7th December, 1941, and the 2nd September, 1945, being by virtue of their respective offices responsible for securing the observance of the said Conventions and assurances and the Laws and Customs of War in respect of the armed forces in the countries hereinafter named and in respect of many thousands of prisoners of war and civilians then in the power of Japan belonging to the United States of America, the British Commonwealth of Nations, the Republic of France, the Kingdom of the Netherlands, the Commonwealth of the Philippines, the Republic of China, the Republic of Portugal and the Union of Soviet Socialist Republics, deliberately and recklessly disregarded their legal duty to take adequate steps to secure the observance and prevent breaches thereof, and thereby violated the laws of war.

In the case of the Republic of China, the said offence began on the 18th September, 1931, and the following accused were responsible for the same in addition to those named above: Araki, Hashimoto, Hiranuma, Hirota, Matsui, Matsuoka, Minami.

2. International Military Tribunal for the Far East, Judgment, 4–12 November 1948 (Excerpts)

NOTE. The trial of those accused in Indictment No. 1 on 3 May 1946 Pleas of "not guilty" were entered for all the defendants. Evidence was heard between 3 June 1946 and 10 February 1948; 419 witnesses testified in court, and 4, 336 exhibits and depositions and affidavits of 779 witnesses were admitted in evidence. Defendants Matsuoka and Nagano died during the course of the trial, and the indictment of the defendant Okawa was suspended by reason of his insanity. The judgment of the Tribunal was read by the President of the Tribunal, Sir William Webb, from 4 to 12 November 1948. The Indian Member of the Tribunal dissented, the French and Netherlands Members dissented in part, the Philippine Member wrote a separate concurring opinion, and the President filed a separate statement of reasons. The Tribunal's judgment was published at Tokyo in six fascicules with a total of 1,218 pages, and an annex of 130 pages.

PART A

CHAPTER 1. ESTABLISHMENT AND PROCEEDINGS OF THE TRIBUNAL

[The Tribunal summarized the instruments under which it was established and the course of its proceedings.]

CHAPTER II. THE LAW

(a) *Jurisdiction of the Tribunal*

In our opinion the law of the Charter is decisive and binding on the Tribunal. This is a special tribunal set up by the Supreme Commander under authority conferred on him by the Allied Powers. It derives its jurisdiction from the Charter. In this trial its members have no jurisdiction except such as is to be found in the Charter. The Order of the Supreme Commander, which appointed the members of the Tribunal, states: "The responsibilities, powers, and duties of the members of the Tribunal are set forth in the Charter thereof. . ." In the result, the members of the Tribunal, being otherwise wholly without power in respect to the trial of the accused, have been empowered by the documents, which constituted the Tribunal and appointed them as

members, to try the accused but subject always to the duty and responsibility of applying to the trial the law set forth in the Charter.

The foregoing expression of opinion is not to be taken as supporting the view, if such view be held, that the Allied Powers or any victor nations have the right under international law in providing for the trial and punishment of war criminals to enact or promulgate laws or vest in their tribunals powers in conflicts with recognised international law or rules or principles thereof. In the exercise of their right to create tribunals for such a purpose and in conferring powers upon such tribunals belligerent powers may act only within the limits of international law.

The substantial grounds of the defence challenge to the jurisdiction of the Tribunal to hear and adjudicate upon the charges contained in the Indictment are the following:

(1) The Allied Powers acting through the Supreme Commander have no authority to include in the Charter of the Tribunal and to designate as justiciable "Crimes against Peace" (Article 5 (a));

(2) Aggressive war is not per se illegal and the Pact of Paris of 1928 renouncing war as an instrument of national policy does not enlarge the meaning of war crimes nor constitute war a crime;

(3) War is the act of a nation for which there is no individual responsibility under international law;

(4) The provisions of the Charter are "ex post facto" legislation and therefore illegal;

(5) The Instrument of Surrender which provides that the Declaration of Potsdam will be given effect imposes the condition that Conventional War Crimes as recognised by international law at the date of the Declaration (26 July, 1945) would be the only crimes prosecuted;

(6) Killings in the course of belligerent operations

except in so far as they constitute violations of the rules of warfare or the laws and customs of war are the normal incidents of war and are not murder;

(7) Several of the accused being prisoners of war are triable by court martial as provided by the Geneva Convention 1929 and not by this Tribunal.

Since the law of the Charter is decisive and binding upon it this Tribunal is formally bound to reject the first four of the above seven contentions advanced for the Defence but in view of the great importance of the questions of law involved the Tribunal will record its opinion on these questions.

After this Tribunal had in May 1946 dismissed the defence motions and upheld the validity of its Charter and its jurisdiction thereunder, stating that the reasons for this decision would be given later, the International Military Tribunal sitting at Nuremberg delivered its verdicts on the first of October 1946. That Tribunal expressed *inter alia* the following opinions:

The Charter is not an arbitrary exercise of power on the part of the victorious nations but is the expression of international law existing at the time of its creation;

The question is what was the legal effect of this pact (Pact of Paris August 27, 1928)? The Nations who signed the pact or adhered to it unconditionally condemned recourse to war for the future as an instrument of policy and expressly renounced it. After the signing of the pact any nation resorting to war as an instrument of national policy breaks the pact. In the opinion of the Tribunal, the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing.

The principle of international law which under certain circumstances protects the representative of a state cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings.

The maxim "nullum crimen sine lege" is not a limitation of sovereignty but is in general a principle of justice. To assert that it is unjust to punish those who in defiance of treaties and assurances have attacked neighboring states without warning is obviously untrue for in such circumstances the attacker must know that he is doing wrong, and so far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished.

The Charter specifically provides . . . "the fact that a defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility but may be considered in mitigation of punishment." This provision is in conformity with the laws of all nations . . . The true test which is found in varying degrees in the criminal law of most nations is not the existence of the order but whether moral choice was in fact possible.

With the foregoing opinions of the Nuremberg Tribunal and the reasoning by which they are reached this Tribunal is in complete accord. They embody complete answers to the first four of the grounds urged by the defence as set forth above. In view of the fact that in all material respects the Charters of this Tribunal and the Nuremberg Tribunal are identical, this Tribunal prefers to express its unqualified adherence to the relevant opinions of the Nuremberg Tribunal rather than by reasoning the matters anew in somewhat different language to open the door to controversy by way of conflicting interpretations of the two statements of opinions.

The fifth ground of the Defence challenge to the Tribunal's jurisdiction is that under the Instrument of Surrender and the Declaration of Potsdam the only crimes for which it was contemplated that proceedings would be taken, being the only war crimes recognized by international law at the date of the Declaration of Potsdam, are Conventional War Crimes as mentioned in Article 5 (b) of the Charter.

Aggressive war was a crime at international law long prior to the date of the Declaration of Potsdam,

and there is no ground for the limited interpretation of the Charter which the defense seek to give it.

A special argument was advanced that in any event the Japanese Government, when they agreed to accept the terms of the Instrument of Surrender, did not in fact understand that those Japanese who were alleged to be responsible for the war would be prosecuted.

There is no basis in fact for this argument. It has been established to the satisfaction of the Tribunal that before the signature of the Instrument of Surrender the point in question had been considered by the Japanese Government and the then members of the Government, who advised the acceptance of the terms of the Instrument of Surrender, anticipated that those alleged to be responsible for the war would be put on trial. As early as the 10th of August, 1945, three weeks before the signing of the Instrument of Surrender, the Emperor said to the accused Kido, "I could not bear the sight . . . of those responsible for the war being punished . . . but I think now is the time to bear the unbearable."

The sixth contention for the Defence; namely, that relating to the charges which allege the commission of murder will be discussed at a later point.

The seventh of these contentions is made on behalf of the four accused who surrendered as prisoners of war—Itagaki, Kimura, Muto and Sato. The submission made on their behalf is that they, being former members of the armed forces of Japan and prisoners of war, are triable as such by court martial under the articles of the Geneva Convention of 1929 relating to prisoners of war, particularly Articles 60 and 63, and not by a tribunal constituted otherwise than under that Convention. This very point was decided by the Supreme Court of the United States of America in the Yamashita case. The late Chief

Justice Stone, delivering the judgment for the majority of the Court said: "We think it clear from the context of these recited provisions that Part 3 and Article 63, which it contains, apply only to judicial proceedings directed against a prisoner of war for offences committed while a prisoner of war. Section V gives no indication that this part was designated to deal with offences other than those referred to in Parts 1 and 2 of Chapter 3." With that conclusion and the reasoning by which it is reached the Tribunal respectfully agrees.

The challenge to the jurisdiction of the Tribunal wholly fails.

(b) *Responsibility for War Crimes Against Prisoners*

Prisoners taken in war and civilian internees are in the power of the Government which captures them. This was not always the case. For the last two centuries, however, this position has been recognised and the customary law to this effect was formally embodied in the Hague Convention No. IV in 1907 and repeated in the Geneva Prisoner of War Convention of 1929. Responsibility for the care of prisoners of war and of civilian internees (all of whom we will refer to as "prisoners") rests therefore with the Government having them in possession. This responsibility is not limited to the duty of mere maintenance but extends to the prevention of mistreatment. In particular, acts of inhumanity to prisoners which are forbidden by the customary law of nations as well as by conventions are to be prevented by the Government having responsibility for the prisoners.

In the discharge of these duties to prisoners Governments must have resort to persons. Indeed the Governments responsible, in this sense, are those persons who direct and control the functions of

Government. In this case and in the above regard we are concerned with the members of the Japanese Cabinet. The duty to prisoners is not a meaningless obligation cast upon a political abstraction. It is a specific duty to be performed in the first case by those persons who constitute the Government. In the multitude of duties and tasks involved in modern government there is of necessity an elaborate system of subdivision and delegation of duties. In the case of the duty of Governments to prisoners held by them in time of war those persons who constitute the Government have the principal and continuing responsibility for their prisoners, even though they delegate the duties of maintenance and protection to others.

In general the responsibility for prisoners held by Japan may be stated to have rested upon:

(1) Members of the Government;

(2) Military or Naval Officers in command of formations having prisoners in their possession;

(3) Officials in those departments which were concerned with the well-being of prisoners;

(4) Officials, whether civilian, military, or naval, having direct and immediate control of prisoners.

It is the duty of all those on whom responsibility rests to secure proper treatment of prisoners and to prevent their ill-treatment by establishing and securing the continuous and efficient working of a system appropriate for these purposes. Such persons fail in this duty and become responsible for ill-treatment of prisoners if:

(1) They fail to establish such a system.

(2) If having established such a system, they fail to secure its continued and efficient working.

Each of such persons has a duty to ascertain that the system is working and if he neglects to do so he is responsible. He does not discharge his duty by

merely instituting an appropriate system and thereafter neglecting to learn of its application. An Army Commander or a Minister of War, for example, must be at the same pains to ensure obedience to his orders in this respect as he would in respect of other orders he has issued on matters of the first importance.

Nevertheless, such persons are not responsible if a proper system and its continuous efficient functioning be provided for and conventional war crimes be committed unless:

(1) They had knowledge that such crimes were being committed, and having such knowledge they failed to take such steps as were within their power to prevent the commission of such crimes in the future, or

(2) They are at fault in having failed to acquire such knowledge.

If, such a person had, or should, but for negligence or supineness, have had such knowledge he is not excused for inaction if his Office required or permitted him to take any action to prevent such crimes. On the other hand it is not enough for the exculpation of a person, otherwise responsible, for him to show that he accepted assurances from others more directly associated with the control of the prisoners if having regard to the position of those others, to the frequency of reports of such crimes, or to any other circumstances he should have been put upon further enquiry as to whether those assurances were true or untrue. That crimes are notorious, numerous and widespread as to time and place are matters to be considered in imputing knowledge.

A member of a Cabinet which collectively, as one of the principal organs of the Government, is responsible for the care of prisoners is not absolved from responsibility if, having knowledge of the

commission of the crimes in the sense already discussed, and omitting or failing to secure the taking of measures to prevent the commission of such crimes in the future, he elects to continue as a member of the Cabinet. This is the position even though the Department of which he has the charge is not directly concerned with the care of prisoners. A Cabinet member may resign. If he has knowledge of ill-treatment of prisoners, is powerless to prevent future ill-treatment, but elects to remain in the Cabinet thereby continuing to participate in its collective responsibility for protection of prisoners he willingly assumes responsibility for any ill-treatment in the future.

Army or Navy Commanders can, by order, secure proper treatment and prevent ill-treatment of prisoners. So can Ministers of War and of the Navy. If crimes are committed against prisoners under their control, of the likely occurrence of which they had, or should have had knowledge in advance, they are responsible for those crimes. If, for example, it be shown that within the units under his command conventional war crimes have been committed of which he knew or should have known, a commander who takes no adequate steps to prevent the occurrence of such crimes in the future will be responsible for such future crimes.

Departmental Officials having knowledge of ill-treatment of prisoners are not responsible by reason of their failure to resign; but if their functions included the administration of the system of protection of prisoners and if they had or should have had knowledge of crimes and did nothing effective, to the extent of their powers, to prevent their occurrence in the future then they are responsible for such future crimes.

(c) *The Indictment*

[The Tribunal gave its reasons for abstaining from consideration of certain counts in the indictment. Counts 6 to 17, which charged the planning and preparation of wars of aggression and wars in violation of international law, treaties, agreements and assurances, were not considered because the Tribunal found it unnecessary in respect to those defendants who were found guilty of conspiracy (charged in Counts 1 to 5) to enter convictions also for planning and preparing. Counts 18 to 26, which charged the initiation of a war of aggression and a war in violation of international law, treaties, agreements and assurances, were not considered because the offense of initiating such wars was included in the offense of waging them, alleged in Counts 27 to 36. Counts 39 to 43 and 44 to 52, which charged the unlawful killing and murdering of various persons by unlawfully ordering, causing and permitting the armed forces of Japan to make certain attacks, were not considered because these murders were part of the offenses of unlawfully waging war alleged in Counts 27 to 36.

[The Tribunal held it had no jurisdiction under the Charter to consider Counts 37, 38, 44 and 52, which charged conspiracy to murder and to commit crimes in breach of the laws of war. Article 5 (a) of the Charter gave jurisdiction over conspiracy to commit crimes against peace, but Article 5 (b) and (c) were held not to give jurisdiction of conspiracies to commit conventional war crimes and crimes against humanity; a reference in Article 5 (c) to "a common plan or conspiracy to commit any of the foregoing crimes" was held to refer exclusively to conspiracies to commit crimes against peace.]

Chapter III. Obligations Assumed and Rights Acquired by Japan

[The Tribunal made a detailed study of the international rights and obligations of Japan relevant to the indictment. It stated that these obligations form a background against which the actions of the accused as should be viewed and judged; later in the opinion it held that wars of aggression having been proved, it was unnecessary to consider whether they were also wars otherwise in violation of international law or in violation of treaties, agreements and assurances.]

PART B

Chapter IV. The Military Domination of Japan and Preparation for War

[The Tribunal reviewed at length the internal political history of Japan between 1 January 1928 and the conclusion of the Triple Alliance with Germany and Italy on 27 September 1940. The coming to power of military extremists in Japan was linked with external aggression in Manchuria and China.]

Chapter V. Japanese Aggression Against China

[The history of Japanese military and economic penetration in Manchuria and North China after 18 September 1931, and of the setting up and operation of puppet governments in those areas, was reviewed.]

Chapter VI. Japanese Aggression Against the U.S.S.R.

[The history of Japan's expectation, advocacy, planning and preparation of war against the U. S. S. R., of Japanese subversion and sabotage, and of the incidents at Lake Khassan in July 1938 and at Nomonhan in May 1939 was reviewed.]

Chapter VII. The Pacific War

[The history of the planning and preparation of the Pacific War between the end of 1938 and 7 December 1941 and of its initiation on the latter date is set out at length. The end of the chapter is reproduced.]

The Japanese Note Delivered in Washington On December 7th 1941

Hague Convention No. III 1907, relative to the opening of hostilities, provides by its first Article "The Contracting Powers recognise that hostilities between themselves must not commence without previous and explicit warning in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war". That Convention was binding on Japan at all relevant times. Under the Charter of the Tribunal the planning, preparation, initiation, or waging of a war in violation of international law, treaties, agreements or assurances is declared to be a crime. Many of the charges in the indictment are based wholly or partly upon the

view that the attacks against Britain and the United States were delivered without previous and explicit warning in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war. For reasons which are discussed elsewhere we have decided that it is unnecessary to deal with these charges. In the case of counts of the indictment which charge conspiracy to wage aggressive wars and wars in violation of international law, treaties, agreements or assurances we have come to the conclusion that the charge of conspiracy to wage aggressive wars has been made out, that these acts are already criminal in the highest degree, and that it is unnecessary to consider whether the charge has also been established in respect of the list of treaties, agreements and assurances—including Hague Convention III—which the indictment alleges to have been broken. We have come to a similar conclusion in respect to the counts which allege the waging of wars of aggression and wars in violation of international law, treaties, agreements and assurances. With regard to the counts of the indictment which charge murder in respect that wars were waged in violation of Hague Convention No. III of 1907 or of other treaties, we have decided that the wars in the course of which these killings occurred were all wars of aggression. The waging of such wars is the major crime, since it involves untold killings, suffering and misery. No good purpose would be served by convicting any defendant of that major crime and also of "murder" eo nomine. Accordingly it is unnecessary for us to express a concluded opinion upon the exact extent of the obligation imposed by Hague Convention III of 1907. It undoubtedly imposes the obligation of giving previous and explicit warning before hostilities are commenced, but it does not define the period which must be allowed between the giving of

this warning and the commencement of hostilities. The position was before the framers of the Convention and has been the subject of controversy among international lawyers ever since the Convention was made. This matter of the duration of the period between warning and hostilities is of course vital. If that period is not sufficient to allow of the transmission of the warning to armed forces in outlying territories and to permit them to put themselves in a state of defence they may be shot down without a chance to defend themselves. It was the existence of this controversy as to the exact extent of the obligation imposed by the Convention which opened the way for TOGO to advise the Liaison Conference of 30th November 1941 that various opinions were held as to the period of warning which was obligatory, that some thought it should be an hour and a half, some an hour, some half an hour. The conference left it to TOGO and the two Chiefs of Staff to fix the time of the delivery of the Note to Washington with the injunction that that time must not interfere with the success of the surprise attack. In short they decided to give notice that negotiations were broken off at so short an interval before they commenced hostilities as to ensure that the armed forces of Britain and the United States at the points of attack could not be warned that negotiations were broken off. TOGO and the naval and military men, to whom the task had been delivered, arranged that the Note should be delivered in Washington at 1.00 p.m. on 7th December 1941. The first attack on Pearl Harbor was delivered at 1.20 p.m. Had all gone well, they would have allowed twenty minutes for Washington to warn the armed forces at Pearl Harbor. But so anxious were they to ensure that the attack would be a surprise that they allowed no margin for contingencies. Thus, through the

decoding and transcription of the Note in the Japanese Embassy taking longer than had been estimated, the Japanese Ambassadors did not in fact arrive with the Note at Secretary Hull's office in Washington until 45 minutes after the attack had been delivered. As for the attack on Britain at Kota Bharu, it was never related to the time (1.00 p.m.) fixed for the delivery of the Note at Washington. This fact has not been adequately explained in the evidence. The attack was delivered at 11.40 a.m. Washington time, one hour and twenty minutes before the Note should have been delivered if the Japanese Embassy at Washington had been able to carry out the instructions it had received from Tokyo.

We have thought it right to pronounce the above findings in fact for these matters have been the subject of much evidence and argument but mainly in order to draw pointed attention to the defects of the Convention as framed. It permits of a narrow construction and tempts the unprincipled to try to comply with the obligation thus narrowly construed while at the same time ensuring that their attacks shall come as a surprise. With the margin thus reduced for the purpose of surprise no allowance can be made for error, mishap or negligence leading to delay in the delivery of the warning, and the possibility is high that the prior warning which the Convention makes obligatory will not in fact be given. TOJO stated that the Japanese Cabinet had this in view for they envisaged that the more the margin was reduced the greater the possibility of mishap.

The Formal Declaration of War

The Japanese Privy Council's Committee of Investigation did not begin the consideration of the question of making a formal declaration of war upon the United States, Great Britain and the Netherlands

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until 7.30 a.m., 8th December (Tokyo time) when it met in the Imperial Palace for that purpose at that time. SHIMADA announced that the attacks had been made upon Pearl Harbor and Kota Bharu; and a bill declaring war on the United States and Great Britain, which had been drafted at the residence of HOSHINO during the night, was introduced. In answer to a question during the deliberations on the bill, TOJO declared in referring to the peace negotiations at Washington that, "those negotiations were continued only for the sake of strategy". TOJO also declared during the deliberations that war would not be declared on the Netherlands in view of future strategic convenience; and that a declaration of war against Thailand would not be made as negotiations were in progress between Japan and Thailand for the conclusion of "an Alliance Pact". The Bill was approved; and it was decided to submit it to the Privy Council. The Privy Council met at 10.50 a.m., 8th December 1941 and passed the Bill. The Imperial Rescript declaring war against the United States and Great Britain was issued between 11.40 and 12.00 a.m., 8th December 1941 (Washington time, 10.40 p.m. and 11.00 p.m., 7th December) (London time, 2.40 a.m. and 3.00 a.m., 8th December). Having been attacked, the United States of America and the United Kingdom of Great Britain and Northern Ireland declared war on Japan on 9th December 1941 (London and Washington, 8th December). On the same day the Netherlands, Netherlands East Indies, Australia, New Zealand, South Africa, Free France, Canada and China also declared war on Japan. The next day, MUTO stated in a conversation with the Chief of Operations of the Army General Staff that the sending of Ambassador Kurusu to the United States was nothing

more than a sort of camouflage of events leading to the opening of hostilities.

Conclusions

It remains to consider the contention advanced on behalf of the defendants that Japan's acts of aggression against France, her attack against the Netherlands, and her attacks on Great Britain and the United States of America were justifiable measures of self-defence. It is argued that these Powers took such measures to restrict the economy of Japan that she had no way of preserving the welfare and prosperity of her nationals but to go to war.

The measures which were taken by these Powers to restrict Japanese trade were taken in an entirely justifiable attempt to induce Japan to depart from a course of aggression on which she had long been embarked and upon which she had determined to continue. Thus the United States of America gave notice to terminate the Treaty of Commerce and Navigation with Japan on 26th July 1939 after Japan had seized Manchuria and a large part of the rest of China and when the existence of the treaty had long ceased to induce Japan to respect the rights and interests of the nationals of the United States in China. It was given in order that some other means might be tried to induce Japan to respect these rights. Thereafter the successive embargoes which were imposed on the export of materials to Japan were imposed as it became clearer and clearer that Japan had determined to attack the territories and interests of the Powers. They were imposed in an attempt to induce Japan to depart from the aggressive policy on which she had determined and in order that the Powers might no longer supply Japan with the materials to wage war upon them. In some cases, as for example in the case of the embargo on the

export of oil from the United States of America to Japan, these measures were also taken in order to build up the supplies which were needed by the nations who were resisting the aggressors. The argument is indeed merely a repetition of Japanese propaganda issued at the time she was preparing for her wars of aggression. It is not easy to have patience with its lengthy repetition at this date when documents are at length available which demonstrate that Japan's decision to expand to the North, to the West and to the South at the expense of her neighbors was taken long before any economic measures were directed against her and was never departed from. The evidence clearly establishes contrary to the contention of the defense that the acts of aggression against France, and the attacks on Britain, the United States of America and the Netherlands were prompted by the desire to deprive China of any aid in the struggle she was waging against Japan's aggression and to secure for Japan the possessions of her neighbors in the South.

The Tribunal is of opinion that the leaders of Japan in the years 1940 and 1941 planned to wage wars of aggression against France in French Indo-China. They had determined to demand that France cede to Japan the right to station troops and the right to air bases and naval bases in French Indo-China, and they had prepared to use force against France if their demands were not granted. They did make such demands upon France under threat that they would use force to obtain them, if that should prove necessary. In her then situation France was compelled to yield to the threat of force and granted the demands.

The Tribunal also finds that a war of aggression was waged against the Republic of France. The occupation by Japanese troops of portions of French

Indo-China, which Japan had forced France to accept, did not remain peaceful. As the war situation, particularly in the Philippines, turned against Japan the Japanese Supreme War Council in February 1945 decided to submit the following demands to the Governor of French Indo-China: (1) that all French troops and armed police be placed under Japanese command, and (2) that all means of communication and transportation necessary for military action be placed under Japanese control. These demands were presented to the Governor of French Indo-China on 9th March 1945 in the form of an ultimatum backed by the threat of military action. He was given two hours to refuse or accept. He refused, and the Japanese proceeded to enforce their demands by military action. French troops and military police resisted the attempt to disarm them. There was fighting in Hanoi, Saigon, Phnom-Penh, Nhatrang, and towards the Northern Frontier. We quote the official Japanese account, "In the Northern frontiers the Japanese had considerable losses. The Japanese army proceeded to suppress French detachments in remote places and contingents which had fled to the mountains. In a month public order was re-established except in remote places". The Japanese Supreme War Council had decided that, if Japan's demands were refused and military action was taken to enforce them, "the two countries will not be considered as at war". This Tribunal finds that Japanese actions at that time constituted the waging of a war of aggression against the Republic of France.

The Tribunal is further of opinion that the attacks which Japan launched on 7th December 1941 against Britain, the United States of America and the Netherlands were wars of aggression. They were unprovoked attacks, prompted by the desire to seize the possessions of these nations. Whatever may be the

difficulty of stating a comprehensive definition of "a war of aggression", attacks made with the above motive cannot but be characterised as wars of aggression.

It was argued on behalf of the defendants that, in as much as the Netherlands took the initiative in declaring war on Japan, the war which followed cannot be described as a war of aggression by Japan. The facts are that Japan had long planned to secure for herself a dominant position in the economy of the Netherlands East Indies by negotiation or by force of arms if negotiation failed. By the middle of 1941 it was apparent that the Netherlands would not yield to the Japanese demands. The leaders of Japan then planned and completed all the preparations for invading and seizing the Netherlands East Indies. The orders issued to the Japanese army for this invasion have not been recovered, but the orders issued to the Japanese navy on 5th November 1941 have been adduced in evidence. This is the Combined Fleet Operations Order No. 1 already referred to. The expected enemies are stated to be the United States, Great Britain and the Netherlands. The order states that the day for the outbreak of war will be given in an Imperial General Headquarters order, and that *after 0000 hours on that day a state of war will exist* and the Japanese forces will commence operations according to the plan. The order of Imperial General Headquarters was issued on 10th November and it fixed 8th December (Tokyo time), 7th December (Washington time) as the date on which a state of war would exist and operations would commence according to the plan. In the very first stage of the operations so to be commenced it is stated that the Southern Area Force will annihilate enemy fleets in the Philippines, British Malaya and the Netherlands East Indies area. There is no evidence that

the above order was ever recalled or altered in respect to the above particulars. In these circumstances we find in fact that orders declaring the existence of a state of war and for the execution of a war of aggression by Japan against the Netherlands were in effect from the early morning of 7th December 1941. The fact that the Netherlands, being fully apprised of the imminence of the attack, in self defence declared war against Japan on 8th December and thus officially recognised the existence of a state of war which had been begun by Japan cannot change that war from a war of aggression on the part of Japan into something other than that. In fact Japan did not declare war against the Netherlands until 11th January 1942 when her troops landed in the Netherlands East Indies. The Imperial Conference of 1st December 1941 decided that "Japan will open hostilities against the United States, Great Britain and the Netherlands." Despite this decision to open hostilities against the Netherlands, and despite the fact that orders for the execution of hostilities against the Netherlands were already in effect, TOJO announced to the Privy Council on 8th December (Tokyo time) when they passed the Bill making a formal declaration of war against the United States of America and Britain that war would not be declared on the Netherlands in view of future strategic convenience. The reason for this was not satisfactorily explained in evidence. The Tribunal is inclined to the view that it was dictated by the policy decided in October 1940 for the purpose of giving as little time as possible for the Dutch to destroy oil wells. It has no bearing, however, on the fact that Japan launched a war of aggression against the Netherlands.

The position of Thailand is special. The evidence bearing upon the entry of Japanese troops into Thailand is meagre to a fault. It is clear that there

was complicity between the Japanese leaders and the leaders of Thailand in the years 1939 and 1940 when Japan forced herself on France as mediator in the dispute as to the border between French Indo-China and Thailand. There is no evidence that the position of complicity and confidence between Japan and Thailand, which was then achieved, was altered before December 1941. It is proved that the Japanese leaders planned to secure a peaceful passage for their troops through Thailand into Malaya by agreement with Thailand. They did not wish to approach Thailand for such an agreement until the moment when they were about to attack Malaya, lest the news of the imminence of that attack should leak out. The Japanese troops marched through the territory of Thailand unopposed on 7th December 1941 (Washington time). The only evidence the prosecution has adduced as to the circumstances of that march is (1) a statement made to the Japanese Privy Council between 10 a.m. and 11.00 a.m. on 8th December 1941 (Tokyo time) that an agreement for the passage of the troops was being negotiated, (2) a Japanese broadcast announcement that they had commenced friendly advancement into Thailand on the afternoon of the 8th December (Tokyo time) (Washington time, 7th December), and that Thailand had facilitated the passage by concluding an agreement at 12.30 p.m., and (3) a conflicting statement, also introduced by the prosecution, that Japanese troops landed at Singora and Patani in Thailand at 3.05 in the morning of 8th December (Tokyo time). On 21st December 1941 Thailand concluded a treaty of alliance with Japan. No witness on behalf of Thailand has complained of Japan's actions as being acts of aggression. In these circumstances we are left without reasonable certainty that the Japanese advance into Thailand was

contrary to the wishes of the Government of Thailand and the charges that the defendants initiated and waged a war of aggression against the Kingdom of Thailand remain unproved.

Count 31 charges that a war of aggression was waged against the British Commonwealth of Nations. The Imperial Rescript which was issued about 12 noon on 8th December 1941 (Tokyo time) states "We hereby declare war on the United States of America and the British Empire." There is a great deal of lack of precision in the use of terms throughout the many plans which were formulated for an attack on British possessions. Thus such terms as "Britain", "Great Britain", and "England" are used without discrimination and apparently used as meaning the same thing. In this case there is no doubt as to the entity which is designated by "the British Empire". The correct title of that entity is "the British Commonwealth of Nations". That by the use of the term "the British Empire" they intended the entity which is more correctly called "the British Commonwealth of Nations" is clear when we consider the terms of the Combined Fleet Operations Order No. 1 already referred to. That order provides that a state of war will exist after 0000 hours X-Day, which was 8th December 1941 (Tokyo time), and that, the Japanese forces would then commence operations. It is provided that in the very first phase of the operations the "South Seas Force" will be ready for the enemy fleet in the Australia area. Later it was provided that "The following are areas expected to be occupied or destroyed as quickly as operational conditions permit, a, Eastern New Guiena, New Britain". These were governed by the Commonwealth of Australia under mandate from the League of Nations. The areas to be destroyed or occupied are also stated to

include "Strategic points in the Australia area". Moreover, "important points in the Australian coast" were to be mined. Now the Commonwealth of Australia is not accurately described as being part of "Great Britain", which is the term used in the Combined Fleet Secret Operations Order No. 1, nor is it accurately described as being part of "the British Empire", which is the term used in the Imperial Rescript. It is properly designated as part of "the British Commonwealth of Nations". It is plain therefore that the entity against which hostilities were to be directed and against which the declaration of war was directed was "the British "Commonwealth of Nations", and Count 31 is well-founded when it charges that a war of aggression was waged against the British Commonwealth of Nations.

It is charged in Count 30 of the Indictment that a war of aggression was waged against the Commonwealth of the Philippines. The Philippines during the period of the war were not a completely sovereign state. So far as international relations were concerned they were part of the United States of America. It is beyond doubt that a war of aggression was waged against the people of the Philippines. For the sake of technical accuracy we shall consider the aggression against the people of the Philippines as being a part of the war of aggression waged against the United States of America.

Chapter VIII. Conventional War Crimes (Atrocities)

After carefully examining and considering all the evidence we find that it is not practicable in a judgment such as this to state fully the mass of oral and documentary evidence presented; for a complete statement of the scale and character of the atrocities reference must be had to the record of the trial.

The evidence relating to atrocities and other Conventional War Crimes presented before the Tribunal establishes that from the opening of the war in China until the surrender of Japan in August 1945 torture, murder, rape and other cruelties of the most inhumane and barbarous character were freely practiced by the Japanese Army and Navy. During a period of several months the Tribunal heard evidence, orally or by affidavit, from witnesses who testified in detail to atrocities committed in all theaters of war on a scale so vast, yet following so common a pattern in all theaters, that only one conclusion is possible—the atrocities were either secretly ordered or wilfully permitted by the Japanese Government or individual members thereof and by the leaders of the armed forces.

[There follows a detailed review of Japanese atrocities and instances of mistreatment of prisoners of war proved before the Tribunal. The Japanese system for handling prisoners of war, Allied protests against mistreatment of prisoners, and Japanese condonation and concealment of ill-treatment of prisoners of war and civilian internees are reviewed.]

PART C

Chapter IX. Findings on Counts of the Indictment

In Count 1 of the Indictment it is charged that all the defendants together with other persons participated in the formulation or execution of a common plan or conspiracy. The object of that common plan is alleged to have been that Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries and islands therein or bordering thereon, and for that purpose should, alone or in combination with other countries having similar objects, wage a war or wars of aggression

against any country or countries which might oppose that purpose.

There are undoubtedly declarations by some of those who are alleged to have participated in the conspiracy which coincide with the above grandiose statement, but in our opinion it has not been proved that these were ever more than declarations of the aspirations of individuals. Thus, for example, we do not think the conspirators ever seriously resolved to attempt to secure the domination of North and South America. So far as the wishes of the conspirators crystallised into a concrete common plan we are of opinion that the territory they had resolved that Japan should dominate was confined to East Asia, the Western and South Western Pacific Ocean and the Indian Ocean, and certain of the islands in these oceans. We shall accordingly treat Count 1 as if the charge had been limited to the above object.

We shall consider in the first place whether a conspiracy with the above object has been proved to have existed.

Already prior to 1928 Okawa, one of the original defendents, who has been discharged from this trial on account of his present mental state, was publicly advocating that Japan should extend her territory on the Continent of Asia by the threat or, if necessary, by use of military force. He also advocated that Japan should seek to dominate Eastern Siberia and the South Sea Islands. He predicted that the course he advocated must result in a war between the East and the West, in which Japan would be the champion of the East. He was encouraged and aided in his advocacy of this plan by the Japanese General Staff. The object of this plan as stated was substantially the object of the conspiracy, as we have defined it. In our review of the facts we have noticed many subsequent declarations of the con-

spirators as to the object of the conspiracy. These do not vary in any material respect from this early declaration by Okawa.

Already when Tanaka was premier, from 1927 to 1929, a party of military men, with Okawa and other civilian supporters, was advocating this policy of Okawa's that Japan should expand by the use of force. The conspiracy was now in being. It remained in being until Japan's defeat in 1945. The immediate question when Tanaka was premier was whether Japan should attempt to expand her influence on the continent—beginning with Manchuria—by peaceful penetration, as Tanaka and the members of his Cabinet wished, or whether that expansion should be accomplished by the use of force if necessary, as the conspirators advocated. It was essential that the conspirators should have the support and control of the nation. This was the beginning of the long struggle between the conspirators, who advocated the attainment of their object by force, and those politicians and latterly those bureaucrats, who advocated Japan's expansion by peaceful measures or at least by a more discreet choice of the occasions on which force should be employed. This struggle culminated in the conspirators obtaining control of the organs of government of Japan and preparing and regimenting the nation's mind and material resources for wars of aggression designed to achieve the object of the conspiracy. In overcoming the opposition the conspirators employed methods which were entirely unconstitutional and at times wholly ruthless. Propaganda and persuasion won many to their side, but military action abroad without Cabinet sanction or in defiance of Cabinet veto, assassination of opposing leaders, plots to overthrow by force of arms Cabinets which refused to cooperate with them, and even a military revolt which seized

the capital and attempted to overthrow the government were part of the tactics whereby the conspirators came ultimately to dominate the Japanese polity.

As and when they felt strong enough to overcome opposition at home and latterly when they had finally overcome all such opposition the conspirators carried out in succession the attacks necessary to effect their ultimate object, that Japan should dominate the Far East. In 1931 they launched a war of aggression against China and conquered Manchuria and Jehol. By 1934 they had commenced to infiltrate into North China, garrisoning the land and setting up puppet governments designed to serve their purposes. From 1937 onwards they continued their aggressive war against China on a vast scale, overrunning and occupying much of the country, setting up puppet governments on the above model, and exploiting China's economy and natural resources to feed the Japanese military and civilian needs.

In the meantime they had long been planning and preparing a war of aggression which they proposed to launch against the U.S.S.R. The intention was to seize that country's Eastern territories when a favourable opportunity occurred. They had also long recognized that their exploitation of East Asia and their designs on the islands in the Western and South Western Pacific would bring them into conflict with the United States of America, Britain, France and the Netherlands who would defend their threatened interests and territories. They planned and prepared for war against these countries also.

The conspirators brought about Japan's alliance with Germany and Italy, whose policies were as aggressive as their own, and whose support they desired both in the diplomatic and military fields,

for their aggressive actions in China had drawn on Japan the condemnation of the League of Nations and left her friendless in the councils of the world.

Their proposed attack on the U.S.S.R. was postponed from time to time for various reasons, among which were (1) Japan's preoccupation with the war in China, which was absorbing unexpectedly large military resources, and (2) Germany's pact of non-aggression with the U.S.S.R. in 1939, which for the time freed the U.S.S.R. from threat of attack on her Western frontier, and might have allowed her to devote the bulk of her strength to the defence of her Eastern territories if Japan had attacked her.

Then in the year 1940 came Germany's great military successes on the continent of Europe. For the time being Great Britain, France and the Netherlands were powerless to afford adequate protection to their interests and territories in the Far East. The military preparations of the United States were in the initial stages. It seemed to the conspirators that no such favourable opportunity could readily recur of realising that part of their objective which sought Japan's domination of South-West Asia and the islands in the Western and South Western Pacific and Indian Oceans. After prolonged negotiations with the United States of America, in which they refused to disgorge any substantial part of the fruits they had seized as the result of their war of aggression against China, on 7th December 1941 the conspirators launched a war of aggression against the United States and the British Commonwealth. They had already issued orders declaring that a state of war existed between Japan and the Netherlands as from 00.00 hours on 7th December 1941. They had previously secured a jumping-off place for their attacks on the Philippines, Malaya and the Netherlands East Indies by

forcing their troops into French Indo-China under threat of military action if this facility was refused to them. Recognising the existence of a state of war and faced by the imminent threat of invasion of her Far Eastern territories, which the conspirators had long planned and were now about to execute, the Netherlands in self-defence declared war on Japan.

These far-reaching plans for waging wars of aggression, and the prolonged and intricate preparation for and waging of these wars of aggression were not the work of one man. They were the work of many leaders acting in pursuance of a common plan for the achievement of a common object. That common object, that they should secure Japan's domination by preparing and waging wars of aggression, was a criminal object. Indeed no more grave crimes can be conceived of than a conspiracy to wage a war of aggression or the waging of a war of aggression, for the conspiracy threatens the security of the peoples of the world, and the waging disrupts it. The probable result of such a conspiracy, and the inevitable result of its execution is that death and suffering will be inflicted on countless human beings.

The Tribunal does not find it necessary to consider whether there was a conspiracy to wage wars in violation of the treaties, agreements and assurances specified in the particulars annexed to Count 1. The conspiracy to wage wars of aggression was already criminal in the highest degree.

The Tribunal finds that the existence of the criminal conspiracy to wage wars of aggression as alleged in Count 1, with the limitation as to object already mentioned, has been proved.

The question whether the defendants or any of them participated in that conspiracy will be considered when we deal with the individual cases.

The conspiracy existed for and its execution occupied a period of many years. Not all of the conspirators were parties to it at the beginning, and some of those who were parties to it had ceased to be active in its execution before the end. All of those who at any time were parties to the criminal conspiracy or who at any time with guilty knowledge played a part in its execution are guilty of the charge contained in Count 1.

In view of our finding on Count 1 it is unnecessary to deal with Counts 2 and 3, which charge the formulation or execution of conspiracies with objects more limited than that which we have found proved under Count 1, or with Count 4, which charges the same conspiracy as Count 1 but with more specification.

Count 5 charges a conspiracy wider in extent and with even more grandiose objects than that charged in Count 1. We are of opinion that although some of the conspirators clearly desired the achievement of these grandiose objects nevertheless there is not sufficient evidence to justify a finding that the conspiracy charged in Count 5 has been proved.

For the reasons given in an earlier part of this judgment we consider it unnecessary to make any pronouncement on Counts 6 to 26 and 37 to 53. There remain therefore only Counts 27 to 36 and 54 and 55, in respect of which we now give our findings.

Counts 27 to 36 charge the crime of waging wars of aggression and wars in violation of international law, treaties, agreements and assurances against the countries named in those counts.

In the statement of facts just concluded we have found that wars of aggression were waged against all those countries with the exception of the Commonwealth of the Philippines (Count 30) and the Kingdom of Thailand (Count 34). With reference

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to the Philippines, as we have heretofore stated, that Commonwealth during the period of the war was not a completely sovereign State and so far as international relations were concerned it was a part of the United States of America. We further stated that it is beyond doubt that a war of aggression was waged in the Philippines, but for the sake of technical accuracy we consider the aggressive war in the Philippines as being a part of the war of aggression waged against the United States of America.

Count 28 charges the waging of a war of aggression against the Republic of China over a lesser period of time than that charged in Count 27. Since we hold that the fuller charge contained in Count 27 has been proved we shall make no pronouncement on Count 28.

Wars of aggression having been proved, it is unnecessary to consider whether they were also wars otherwise in violation of international law or in violation of treaties, agreements and assurances. The Tribunal finds therefore that it has been proved that wars of aggression were waged as alleged in Counts 27, 29, 31, 32, 33, 35 and 36.

Count 54 charges ordering, authorising and permitting the commission of Conventional War Crimes. Count 55 charges failure to take adequate steps to secure the observance and prevent breaches of conventions and laws of war in respect of prisoners of war and civilian internees. We find that there have been cases in which crimes under both these Counts have been proved.

Consequent upon the foregoing findings, we propose to consider the charges against individual defendants in respect only of the following Counts: Numbers 1, 27, 29, 31, 32, 33, 35, 36, 54 and 55.

Chapter X. Verdicts

[This chapter is omitted.]

3. Tabulation of the Tokyo Sentences of Individual Defendants

Dependent	Counts on which convicted	Sentence
Araki, Sadao	1, 27	Life.
Dohihara, Kenji	1, 27, 29, 31, 32, 35, 36, 54	Hanging.
Hashimoto, Kingoro	1, 27	Life.
Hata, Shunroku	1, 27, 29, 31, 32, 55	Life.
Hiranuma, Kiichiro	1, 27, 29, 31, 32, 36	Life.
Hirota, Koki	1, 27, 55	Hanging.
Hoshino, Naoki	1, 27, 29, 31, 32	Life.
Itagaki, Seishiro	1, 27, 29, 31, 32, 35, 36, 54	Hanging.
Kaya, Okinori	1, 27, 29, 31, 32	Life.
Kido, Koichi	1, 27, 29 ,31, 32	Life.
Kimura, Heitaro	1, 27, 29, 31, 32, 54, 55	Hanging.
Koiso, Kuniaki	1, 27, 29, 31, 32, 55	Life.
Matsui, Iwane	55	Hanging.
Minami, Jiro	1, 27	Life.
Muto, Akira	1, 27, 29, 31, 32, 54, 55	Hanging.
Oka, Takasumi	1, 27, 29, 31, 32	Life.
Oshima, Hiroshi	1	Life.
Sato, Kenryo	1, 27, 29, 31, 32	Life.
Shigemitsu, Mamoru	27, 29, 31, 32, 33, 55	7 years.
Shimada, Shigetaro	1, 27, 29, 31, 32	Life.
Shiratori, Toshio	1	Life.
Suzuki, Teiichi	1, 27, 29, 31, 32	Life.
Togo, Shigenori	1, 27, 29, 31, 32	20 years.
Tojo, Hideaki	1, 27, 29, 31, 32, 33, 54	Hanging.
Umezu, Yoshijiro	1, 27, 29, 31, 32	Life.

III. RIGHTS CLAIMED BY LITTORAL STATES IN ADJACENT SEAS

1. The Corfu Channel Case (Merits), International Court of Justice, Judgment of 9 April 1949

NOTE. On 22 October 1946 two British destroyers, the *Saumarez* and *Volage*, while navigating within Albanian territorial waters in the North Corfu Channel, struck mines and were seriously damaged, with heavy loss of life. On 13 November 1946 British minesweepers swept the area where the incident had occurred, and recovered some mines. After having tried unsuccessfully to obtain an apology and compensation from Albania through diplomatic channels, the Government of the United Kingdom brought the dispute to the attention of the Security Council of the United Nations by a letter of 10 January 1947. By a resolution of 9 April 1947, the Security Council recommended "that the Unite d Kingdom and the Albanian Government should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court." Security Council, Official Records, Second Year, No. 34, pp. 726–727.

Proceedings were instituted before the Court by an application of the Government of the United Kingdom on 22 May 1947. By a letter of 2 July 1947 the Albanian Government stated that it accepted the recommendation of the Security Council and accepted "the Court's jurisdiction for this case." By a judgment of 25 March 1948, the Court rejected a preliminary objection by Albania and held that it had jurisdiction of the case. I. C. J. Reports 1948, p. 15. Immediately after the delivery of this judgment the parties notified the Court that they had concluded a special agreement submitting two questions to the Court for decision. The Court handed down a judgment on the merits on 9 April 1949; on the same day it issued an order setting time limits for submission of the parties' observations concerning the assessment of the amount of compensation due from Albania. I. C. J. Reports 1949, p. 171.

(International Court of Justice Reports, 1949, pp. 4–169.)

Present: Acting President Guerrero; President Basdevant; Judges Alvarez, Fabela, Hackworth, Winiarski, Zoričić, De Visscher, Sir Arnold McNair, Klaestad, Badawi Pasha, Krylov, Read, Hsu Mo, Azevedo; M. Ečer, Judge ad hoc.

In the Corfu Channel case, between the Government of the United Kingdom of Great Britain and Northern Ireland, represented by:

Sir Eric Beckett, K. C. M. G., K. C., Legal

Adviser to the Foreign Office, as Agent and Counsel assisted by

The Right Honourable Sir Hartley Shawcross, K. C., M. P., Attorney-General, replaced on November 15th, 1948, by

Sir Frank Soskice, K. C., M. P., Solicitor-General;

Mr. C. H. M. Waldock, Professor of international law in the University of Oxford,

Mr. R. O. Wilberforce,

Mr. J. Mervyn Jones, and

Mr. M. E. Reed (of the Attorney-General's Office), members of the English Bar, as Counsel, and

The Government of the People's Republic of Albania, represented by:

M. Kahreman Ylli, Envoy Extraordinary and Minister Plenipotentiary of Albania in Paris, as Agent, replaced on February 14th, 1949, by

M. Behar Shtylla, Envoy Extraordinary and Minister Plenipotentiary of Albania in Paris, assisted by

M. Pierre Cot. *Professeur agrégé* of the Faculties of Law of France, and

Maître Joe Nordmann, of the Paris Bar, as Counsel; and

Maître Marc Jacquier, of the Paris Bar, and

Maître Paul Villard, of the Paris Bar, as Advocates.

The Court, composed as above, delivers the following judgment:

By a Judgment delivered on March 25th, 1948 (I. C. J. Reports 1947-1948, p. 15), in the Corfu Channel case, in proceedings instituted on May 22nd, 1947, by an application of the Government of the United Kingdom of Great Britain and Northern Ireland against the Government of the People's Republic of Albania, the Court gave its decision on the Preliminary Objection filed on December 9th,

1947, by the latter Government. The Court rejected the Objection and decided that proceedings on the merits should continue, and fixed the time-limits for the filing of subsequent pleadings as follows: for the Counter-Memorial of Albania: June 15th, 1948; for the Reply of the United Kingdom: August 2nd, 1948; for the Rejoinder of Albania: September 20th, 1948.

Immediately after the delivery of the judgment, the Court was notified by the Agents of the Parties of a Special Agreement, which is as follows:

The Government of the People's Republic of Albania, represented by their Agent Mr. Kahreman Ylli, Envoy Extraordinary and Minister Plenipotentiary of Albania at Paris;
and

the Government of the United Kingdom of Great Britain and Northern Ireland, represented by their Agent, Mr. W. E. Beckett, C.M.G., K.C., Legal Adviser to the Foreign Office;

Have accepted the present Special Agreement, which has been drawn up as a result of the Resolution of the Security Council of the 9th April, 1947, for the purpose of submitting to the International Court of Justice for decision the following questions:

(1) Is Albania responsible under international law for the explosion which occurred on the 22nd October 1946 in Albanian waters and for the damage and loss of human life which resulted from them and is there any duty to pay compensation?

(2) Has the United Kingdom under international law violated the sovereignty of the Albanian People's Republic by reason of the acts of the Royal Navy in Albanian waters on the 22nd October and on the 12th and 13th November 1946 and is there any duty to give satisfaction?

The Parties agree that the present Special Agreement shall be notified to the International Court of Justice immediately after the delivery on the 25th March of its judgment on the question of jurisdiction.

The Parties request the Court, having regard to the present Special Agreement, to make such orders with regard to procedure, in conformity with the Statute and the Rules of the Court, as the Court may deem fit, after having consulted the Agents of the Parties.

In witness whereof the above-mentioned Agents, being duly authorized by their Government to this effect, have signed the present Special Agreement.

Done this 25th day of March, 1948, at midday, at The Hague, in English and French, both texts being equally authentic, in a single copy which shall be deposited with the International Court of Justice.

On March 26th, 1948 (I. C. J. Reports 1947-1948, p. 53), the Court made an Order in which it placed on record that the Special Agreement now formed the basis of further proceedings before the Court, and stated the questions submitted to it for decision. The Court noted that the United Kingdom Government, on October 1st, 1947, that is within the time-limit fixed by the Court, had filed a Memorial with statements and submissions relating to the incident that occurred on October 22nd, 1946. It further noted that the Agents, having been consulted, declared that they agreed in requesting that the order and time-limits for the filing of the subsequent pleadings as fixed by the Judgment of March 25th, 1948, be maintained. The Court confirmed this order and these time-limits.

The Counter-Memorial, Reply and Rejoinder were filed within these limits. The case was thus ready for hearing on September 20th, 1948, and the commencement of the oral proceedings was then fixed for November 5th, 1948.

As the Court did not include upon the Bench a judge of Albanian nationality, the Albanian Government availed itself during the proceedings on the Preliminary Objection of the right provided by Article 31, paragraph 2, of the Statute, and chose M. Igor Daxner, Doctor of Law, President of a Chamber of the Supreme Court of Czechoslovakia, as Judge *ad hoc*. On October 28th, 1948, the Registrar was informed that Judge Daxner was

prevented by reasons of health from sitting on the date fixed. The Court decided on November 2nd, 1948, to fix a time-limit expiring on November 7th, within which the Albanian Government might notify the name of the person whom it wished to choose as Judge *ad hoc* in place of Dr. Daxner, and to postpone the opening of the hearing until November 9th, Within the time fixed the Albanian Government designated M. Bohuslav Ečer, Doctor of Law and Professor in the Faculty of Law at Brno, and delegate of the Czechoslovak Government to the International Military Tribunal at Nuremberg.

Public sittings were held by the Court on the following dates: November, 1948, 9th to 12th, 15th to 19th, 22nd to 26th, 28th and 29th; December, 1948, 1st to 4th, 6th to 11th, 13th, 14th and 17th; January, 1949, 17th to 22nd. In the course of the sittings from November 9th to 19th, 1948, and from January 17th to 22nd, 1949, the Court heard arguments by Sir Hartley Shawcross, K. C., Counsel, Sir Eric Beckett, K. C., Agent and Counsel, and Sir Frank Soskice, K. C., Counsel, on behalf of the United Kingdom; and by M. Kahreman Ylli, Agent, and MM. J. Nordmann and Pierre Cot, Counsel, on behalf of Albania. In the course of the sittings from November 22nd to December 14th, 1948, the Court heard the evidence of the witnesses and experts called by each of the Parties in reply to questions put to them in examination and cross-examination on behalf of the Parties, and by the President on behalf of the Court or by a Member of the Court. The following persons gave evidence:

Called by the United Kingdom:

Commander E. R. D. Sworder, O.B.E., D.S.C., Royal Naval Volunteer Reserve, as witness and expert;

Karel Kovacic, former Lieutenant-Commander in the Yugoslav Navy, as witness;

Captain W. H. Selby, D.S.C., Royal Navy, as witness;

Commander R. T. Paul, C.B.E., Royal Navy, as witness;

Lieutenant-Commander P. K. Lankester, Royal Navy, as witness and expert;

Commander R. Mestre, French Navy, as witness;

Commander Q. P. Whitford, O.B.E., Royal Navy, as witness and expert;

Called by Albania:

Captain Ali Shtino, Albanian Army, as witness;

First Captain Aquile Polena, Albanian Army, as witness;

Xhavit Muço, former Vice-President of the Executive Committee of Saranda, as witness;

Captain B. I. Ormanov, Bulgarian Navy, as expert.

Rear-Admiral Raymond Moullec, French Navy, as expert.

Documents, including maps, photographs and sketches, were filed by both Parties, and on one occasion by the Parties jointly, both as annexes to the pleadings, and after the close of the written proceedings. On one occasion during the sittings when a photostat of an extract from a document was submitted, the Court, on November 24th, 1948, made a decision in which it reminded both Parties of the provisions of Article 48 and Article 43, paragraph 1, of the Rules of Court; held that the document in question could be received only if it were presented in an original and complete form; ordered that all documents which the Parties intended to use should previously be filed in the Registry; and reserved the right to inform the Parties later which

of these documents should be presented in an original, and which in certified true copy, form.

Another decision as to the production of a series of new documents was given by the Court on December 10th, 1948. This decision noted that the Parties were agreed as to the production of certain of these documents and that certain others were withdrawn; authorized the production of certain other documents; lastly, in the case of one of these documents, the examination of which had been subjected to certain conditions, the Court's decision placed on record the consent of the other Party to its production and, in view of that consent, permitted its production, having regard to the special circumstances; but the Court expressly stated that this permission could not form a precedent for the future[1].

By an Order of December 17th, 1948, the Court, having regard to the fact that certain points had been contested between the Parties which made it necessary to obtain an expert opinion, defined these points, and entrusted the duty of giving the expert opinion to a Committee composed of Commodore J. Bull of the Royal Norwegian Navy, Commodore S. A. Forshell of the Royal Swedish Navy, and Lieutenant-Commander S. J. W Elfferich of the Royal Netherlands Navy. These Experts elected Commodore Bull as their chairman, and filed their Report on January 8th, 1949, within the prescribed time-limit. By a decision read at a public sitting on January 17th, the Court requested the Experts to proceed to Sibenik in Yugoslavia and Saranda in Albania and to make on the land and in the waters adjacent to these places any investigations and experiments that they might consider useful with a view to verifying, completing, and, if necessary, modifying the answers given in their report of January 8th. The Experts' second report—in which

Commodore Bull did not join, having been unable to make the journey for reasons of health—was filed on February 8th, 1949. On February 10th, three members of the Court put questions to the Experts, to which the Experts replied on February 12th.

At sittings held from January 17th to 22nd, 1949, the representatives of the Parties had an opportunity of commenting orally on the Experts' report of January 8th. They also filed written observations[2] concerning the further statements contained in the Report of February 8th and the replies of February 12th, as provided in the Court's decision of January 17th.

The Parties' submissions, as formulated by their Agents or Counsel at the end of the hearings on the 18th, 19th, 21st and 22nd January, 1949, are as follows:

Question (1) *of the Special Agreement.*

On behalf of the United Kingdom:

The Government of the United Kingdom asks the Court in this case to adjudge and declare as follows:

(1) That, on October 22nd, 1946, damage was caused to His Majesty's ships *Saumarez* and *Volage*, which resulted in the death and injuries of 44, and personal injuries to 42, British officers and men by a minefield of anchored automatic mines in the international highway of the Corfu Strait in an area south-west of the Bay of Saranda;

(2) That the aforesaid minefield was laid between May 15th and October 22nd, 1946, by or with the connivance or knowledge of the Albanian Government;

(3) That (alternatively to 2) the Albanian Government knew that the said minefield was lying in a part of its territorial waters;

(4) That the Albanian Government did not notify the existence of these mines as required by the Hague Convention VIII

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[1] The list of documents in support produced by the Parties and accepted by the Court will be found in Annex 1 to this Judgment.

[2] See Annex 2 for the Experts' Report of January 8th, the Court's decision of January 17th, the Experts' second Report of February 8th, the questions put by three members of the Court, and the Experts' replies of February 12th.

of 1907 in accordance with the general principle of international law and humanity;

(5) That in addition, and as an aggravation of the conduct of Albania as set forth in Conclusions (3) and (4), the Albanian Government, or its agents, knowing that His Majesty's ships were going to make the passage through the North Corfu swept channel, and being in a position to observe their approach, and having omitted, as alleged in paragraph 4 of these conclusions to notify the existence of the said mines, failed to warn His Majesty's ships of the danger of the said mines of which the Albanian Government or its agents were well aware;

(6) That in addition, and as a further aggravation of the conduct of Albania as set forth in Conclusions (3), (4), and (5), the permission of the existence without notification of the minefield in the North Corfu Channel, being an international highways was a violation of the right of innocent passage which exist, in favour of foreign vessels (whether warships or merchant ships) through such an international highway;

(7) That the passage of His Majesty's ships through the North Corfu Channel on October 22nd, 1946, was an exercise of the right of innocent passage, according to the law and practice of civilized nations;

(8) That even if, for any reason, it is held that conclusion (7) is not established, nevertheless, the Albanian Government is not thereby relieved of its international responsibility for the damage caused to the ships by reason of the existence of an unnotified minefield of which it had knowledge;

(9) That in the circumstances set forth in the Memorial as summarized in the preceding paragraphs of these Conclusions, the Albanian Government has committed a breach of its obligations under international law, and is internationally responsible to His Majesty's Government in the United Kingdom for the deaths, injuries and damage caused to His Majesty's ships and personnel, as set out more particularly in paragraph 18 of the Memorial and the Annexes thereto;

(10) That the Albanian Government is under an obligation to the Government of the United Kingdom to make reparation in respect of the breach of its international obligations as aforesaid;

(11) That His Majesty's Government in the United Kingdom has, as a result of the breach by the Albanian Government of its obligations under international law, sustained the following damage:

Damage to H.M.S. *Saumarez*	£750,000
Damage to H.M.S. *Volage*	75,000
Compensation for the pensions and other expenses incurred by the Government of the United Kingdom in respect of the deaths and injuries of naval personnel	50,000
	875,000

On behalf of the Albanian Government:

[Translation.]

(1) Under the terms of the Special Agreement of March 25th, 1948, the following question has been submitted to the International Court of Justice:

> ' Is Albania responsible under international law for the explosions which occurred on the 22nd October 1946 in Albanian waters and for the damage and loss of human life which resulted from them and is there any duty to pay compensation?'
>
> The Court would not have jurisdiction, in virtue of this Special Agreement, to decide, if the case arose, on the claim for the assessment of the compensation set out in the submissions of the United Kingdom Government.

(2) It has not been proved that the mines which caused the accidents of October 22nd, 1946, were laid by Albania.

(3) It has not been proved that these mines were laid by a third Power on behalf of Albania.

(4) It has not been proved that these mines were laid with the help or acquiescence of Albania.

(5) It has not been proved that Albania knew, before the incidents of October 22nd, 1946, that these mines were in her territorial waters.

(6) Consequently, Albania cannot be declared responsible, under international law, for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life which resulted from them. Albania owes no compensation to the United Kingdom Government.

Question (2) *of the Special Agreement.*

On behalf of the Albanian Government:

[Translation.]

(1) Under the terms of the Special Agreement concluded on March 25th, 1948, the International Court of Justice has before it the following question:

> Has the United Kingdom under international law violated the sovereignty of the Albanian People's Republic by

reason of the acts of the Royal Navy in Albanian waters on the 22nd October and on the 12th and 13th November 1946, and is there any duty to give satisfaction?

(2) The coastal State is entitled, in exceptional circumstances, to regulate the passage of foreign warships through its territorial waters.

(3) This rule is applicable to the North Carfu Channel.

(4) In October and November, 1946, there existed, in this area, exceptional circumstances which gave the Albanian Government the right to require that foreign warships should obtain previous authorization before passing through its territorial waters.

(5) The passage of several British warships through Albanian territorial waters on October 22nd, 1946, without previous authorization, constituted a breach of international law.

(6) In any case that passage was not of an innocent character.

(7) The British naval authorities were not entitled to proceed on November 12th and 13th, 1946, to sweep mines in Albanian territorial waters without the previous consent of the Albanian authorities.

(8) The Court should find that, on both these occasions, the Government of the United Kingdom of Great Britain and Northern Ireland committed a breach of the rules of international law and that the Albanian Government has a right to demand that it should give satisfaction therefor."

On behalf of the United Kingdom Government:

I ask the Court to decide that on neither head of the counter-claim has Albania made out her case, and that there is no ground for the Court to award nominal damages of one farthing or one franc.

* * * * *

By the first part of the Special Agreement, the following question is submitted to the Court:

(1) Is Albania responsible under international law for the explosions which occurred on the 22nd October 1946 in Albanian waters and for the damage and loss of human life which resulted from them and is there any duty to pay compensation?

On October 22nd, 1946, a squadron of British warships, the cruisers *Mauritius* and *Leander* and the destroyers *Saumarez* and *Volage*, left the port of

Corfu and proceeded northward through a channel previously swept for mines in the North Corfu Strait. The cruiser *Mauritius* was leading, followed by the destroyer *Saumarez;* at a certain distance thereafter came the cruiser *Leander* followed by the destroyer *Volage*. Outside the Bay of Saranda, *Saumarez* struck a mine and was heavily damaged. *Volage* was ordered to give her assistance and to take her in tow. Whilst towing the damaged ship, *Volage* struck a mine and was much damaged. Nevertheless, she succeeded in towing the other ship back to Corfu.

Three weeks later, on November 13th, the North Corfu Channel was swept by British minesweepers and twenty-two moored mines were cut. Two mines were taken to Malta for expert examination. During the minesweeping operations it was thought that the mines were of the German GR type, but it was subsequently established that they were of the German GY type.

The Court will consider first whether the two explosions that occurred on October 22nd, 1946, were caused by mines belonging to the minefield discovered on November 13th.

It was pointed out on behalf of the United Kingdom Government that this minefield had been recently laid. This was disputed in the Albanian pleadings but was no longer disputed during the hearing. One of the Albanian Counsel expressly recognized that the minefield had been recently laid, and the other Counsel subsequently made a similar declaration. It was further asserted on behalf of the Albanian Government that the minefield must have been laid after October 22nd; this would make it impossible at the same time to maintain that the minefield was old. The documents produced by the United Kingdom Government and the statements

made by the Court's Experts and based on these documents show that the minefield had been recently laid. This is now established.

The United Kingdom Government contended that the mines which struck the two ships on October 22nd were part of this minefield.

This was contested by the Albanian Government, which argued that these mines may have been floating mines, coming from old minefields in the vicinity, or magnetic ground mines, magnetic moored mines, or German GR mines. It was also contested by them that the explosions occurred in the previously swept channel at the place where the minefield was discovered. The Albanian Government also contended that the minefield was laid after October 22nd, between that date and the minesweeping operation on 12-13th November.

On the evidence produced, the Court finds that the following facts are established:

In October, 1944, the North Corfu Channel was swept by the British Navy and no mines were found in the channel thus swept, whereupon the existence of a safe route through the Channel was announced in November 1944. In January and February, 1945, the Channel was check-swept by the British Navy with negative results. That the British Admiralty must have considered the Channel to be a safe route for navigation is shown by the fact that on May 15th, 1946, it sent two British cruisers and on October 22nd a squadron through the Channel without any special measures of precaution against danger from moored mines. It was in this swept channel that the minefield was discovered on November 13th, 1946.

It is further proved by evidence produced by the United Kingdom Government that the mining of *Saumarez* and *Volage* occurred in Albanian territorial

waters, just at the place in the swept channel where the minefield was found, as indicated on the chart forming Annex 9 to the United Kingdom Memorial. This is confirmed by the Court's Experts, who consider it to be free from any doubt that the two ships were mined in approximately the position indicated on this chart.

It is established by the evidence of witnesses that the minefield consisted of moored contact mines of the German GY type. It is further shown by the nature of the damage sustained by the two ships, and confirmed by witnesses and experts, that it could not have been caused by floating mines, magnetic ground mines, magnetic moored mines, or German GR mines. The experts of the Court have stated that the nature of the damage excludes the faintest possibility of its cause being a floating mine; nor could it have been caused by a ground mine. They also expressed the view that the damage must have been caused by the explosion of moored contact mines, each having a charge of approximately 600 lbs. of explosives, and that the two ships struck mines of the same type as those which were swept on November 13th, 1946.

The Albanian Government put forward a suggestion that the minefield discovered on November 13th may have been laid after October 22nd, so that the explosions that occurred on this latter date would not have been caused by mines from the field in question. But it brought no evidence in support of this supposition. As it has been established that the explosions could only have been due to moored mines having an explosive charge similar to that contained in GY mines, there would, if the Albanian contention were true, have been at least two mines of this nature in the channel outside the Bay of Saranda, in spite of the sweep in October 1944 and

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the check-sweeps in January and February 1945; and these mines would have been struck by the two vessels at points fairly close to one another on October 22nd, 1946. Such a supposition is too improbable to be accepted.

The Court consequently finds that the following facts are established. The two ships were mined in Albanian territorial waters in a previously swept and check-swept channel just at the place where a newly laid minefield consisting of moored contact German GY mines was discovered three weeks later. The damage sustained by the ships was inconsistent with damage which could have been caused by floating mines, magnetic ground mines, magnetic moored mines, or German GR mines, but its nature and extent were such as would be caused by mines of the type found in the minefield. In such circumstances the Court arrives at the conclusion that the explosions were due to mines belonging to that minefield.

* * * * *

Such are the facts upon which the Court must, in order to reply to the first question of the Special Agreement, give judgment as to Albania's responsibility for the explosions on October 22nd, 1946, and for the damage and loss of human life which resulted, and for the compensation, if any, due in respect of such damage and loss.

To begin with, the foundation for Albania's responsibility, as alleged by the United Kingdom, must be considered. On this subject, the main position of the United Kingdom is to be found in its submission No. 2: that the minefield which caused the explosions was laid between May 15th, 1946, and October 22nd, 1946, by or with the connivance or knowledge of the Albanian Government.

The Court considered first the various grounds for responsibility alleged in this submission.

In fact, although the United Kingdom Government never abandoned its contention that Albania herself laid the mines, very little attempt was made by the Government to demonstrate this point. In the written Reply, the United Kingdom Government takes note of the Albanian Government's formal statement that it did not lay the mines, and was not in a position to do so, as Albania possessed no navy; and that, on the whole Albanian littoral, the Albanian authorities only had a few launches and motor boats. In the light of these statements, the Albanian Government was called upon, in the Reply, to disclose the circumstances in which two Yugoslav war vessels, the *Mljet* and the *Meljine*, carrying contact mines of the GY type, sailed southward from the port of Sibenik on or about October 18th, and proceeded to the Corfu Channel. The United Kingdom Government, having thus indicated the argument upon which it was thenceforth to concentrate, stated that it proposed to show that the said warships, with the knowledge and connivance of the Albanian Government, laid mines in the Corfu Channel just before October 22nd, 1946. The facts were presented in the same light and in the same language in the oral reply by Counsel for the United Kingdom Government at the sittings on January 17th and 18th, 1949.

Although the suggestion that the minefield was laid by Albania was repeated in the United Kingdom statement in Court on January 18th, 1949, and in the final submissions read in Court on the same day, this suggestion was in fact hardly put forward at that time except *pro memoria*, and no evidence in support was furnished.

In these circumstances, the Court need pay no further attention to this matter.

The Court now comes to the second alternative argument of the United Kingdom Government, namely, that the minefield was laid with the connivance of the Albanian Government. According to this argument, the minelaying operation was carried out by two Yugoslav warships at a date prior to October 22nd, but very near that date. This would imply collusion between the Albanian and the Yugoslav Governments, consisting either of a request by the Albanian Government to the Yugoslav Government for assistance, or of acquiescence by the Albanian authorities in the laying of the mines.

In proof of this collusion, the United Kingdom Government relied on the evidence of Lieutenant-Commander Kovacic, as shown in his affidavit of October 4th, 1948, and in his statements in Court at the public sittings on November 24th, 25th, 26th and 27th, 1948. The Court gave much attention to this evidence and to the documentary information supplied by the Parties. It supplemented and checked all this information by sending two experts appointed by it to Sibenik: Commodore S. A. Forshell and Lieutenant-Commander S. J. W. Elfferich.

Without deciding as to the personal sincerity of the witness Kovacic, or the truth of what he said, the Court finds that the facts stated by the witness from his personal knowledge are not sufficient to prove what the United Kingdom Government considered them to prove. His allegations that he saw mines being loaded upon two Yugoslav minesweepers at Sibenik and that these two vessels departed from Sibenik about October 18th and returned a few days after the occurrence of the explosions do not suffice to constitute decisive legal proof that the mines were laid by these two vessels in Albanian waters off Saranda. The statements attributed by the witness Kovacic to third parties, of which the Court has

received no personal and direct confirmation, can be regarded only as allegations falling short of conclusive evidence. A charge of such exceptional gravity against a State would require a degree of certainty that has not been reached here.

Apart from Kovacic's evidence, the United Kingdom Government endeavoured to prove collusion between Albania and Yugoslavia by certain presumptions of fact, or circumstantial evidence, such as the possession, at that time, by Yugoslavia, and by no other neighbouring State, of GY mines, and by the bond of close political and military alliance between Albania and Yugoslavia, resulting from the Treaty of friendship and mutual assistance signed by those two States on July 9th, 1946.

The Court considers that, even in so far as these facts are established, they lead to no firm conclusion. It has not been legally established that Yugoslavia possessed any GY mines, and the origin of the mines laid in Albanian territorial waters remains a matter for conjecture. It is clear that the existence of a treaty, such as that of July 9th, 1946, however close may be the bonds uniting its signatories, in no way leads to the conclusion that they participated in a criminal act.

On its side, the Yugoslav Government, although not a party to the proceedings, authorized the Albanian Government to produce certain Yugoslav documents, for the purpose of refuting the United Kingdom contention that the mines had been laid by two ships of the Yugoslav Navy. As the Court was anxious for full light to be thrown on the facts alleged, it did not refuse to receive these documents. But Yugoslavia's absence from the proceedings meant that these documents could only be admitted as evidence subject to reserves, and the Court finds

it unnecessary to express an opinion upon their probative value.

The Court need not dwell on the assertion of one of the Counsel for the Albanian Government that the minefield might have been laid by the Greek Government. It is enough to say that this was a mere conjecture which, as Counsel himself admitted, was based on no proof.

In the light of the information now available to the Court, the authors of the minelaying remain unknown. In any case, the task of the Court, as defined by the Special Agreement, is to decide whether Albania is responsible, under international law, for the explosions which occurred on October 22nd, 1946, and to give judgment as to the compensation, if any.

Finally, the United Kingdom Government put forward the argument that, whoever the authors of the minelaying were, it could not have been done without the Albanian Government's knowledge.

It is clear that knowledge of the minelaying cannot be imputed to the Albanian Government by reason merely of the fact that a minefield discovered in Albanian territorial waters caused the explosions of which the British warships were the victims. It is true, as international practice shows, that a State on whose territory or in whose waters an act contrary to international law has occurred, may be called upon to give an explanation. It is also true that that State cannot evade such a request by limiting itself to a reply that it is ignorant of the circumstances of the act and of its authors. The State may, up to a certain point, be bound to supply particulars of the use made by it of the means of information and inquiry at its disposal. But it cannot be concluded from the mere fact of the control exercised by a State over its territory and waters

that that State necessarily knew, or ought to have known, of any unlawful act perpetrated therein, nor yet that it necessarily knew, or should have known, the authors. This fact, by itself and apart from other circumstances, neither involves *prima facie* responsibility nor shifts the burden of proof.

On the other hand, the fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion.

The Court must examine therefore whether it has been established by means of indirect evidence that Albania has knowledge of minelaying in her territorial waters independently of any connivance on her part in this operation. The proof may be drawn from inferences of fact, provided that they leave *no room* for reasonable doubt. The elements of fact on which these inferences can be based may differ from those which are relevant to the question of connivance.

In the present case, two series of facts, which corroborate one another, have to be considered: the first relates to Albania's attitude before and after the disaster of October 22nd, 1946; the other concerns the feasibility of observing minelaying from the Albanian coast.

1. It is clearly established that the Albanian Government constantly kept a close watch over the waters of the North Corfu Channel, at any rate after May 1946. This vigilance is proved by the declaration of the Albanian Delegate in the Security Council on February 19th, 1947 (*Official Records of the Security Council*, Second Year, No. 16, p. 328), and especially by the diplomatic notes of the Albanian Government concerning the passage of foreign ships through its territorial waters. This vigilance sometimes went so far as to involve the use of force: for example the gunfire in the direction of the British cruisers *Orion* and *Superb* on May 15th, 1946, and the shots fired at the U.N.R.R.A. tug and barges on October 29th, 1946, as established by the affidavit Enrico Bargellini, which was not seriously contested.

The Albanian Government's notes are all evidence of its intention to keep a jealous watch on its territorial waters. The *note verbale* addressed to the United Kingdom on May 21st, 1946, reveals the existence of a "General Order", in execution of which the Coastal Commander gave the order to fire in the direction of the British cruisers. This same note formulates a demand that "permission" shall be given, by the Albanian authorities, for passage through territorial waters. The insistence on "formalities" and "permission" by Albania is repeated in the Albanian note of June 19th.

As the Parties agree that the minefield had been recently laid, it must be concluded that the operation was carried out during the period of close watch by the Albanian authorities in this sector. This conclusion renders the Albanian Government's assertion of ignorance *a priori* somewhat improbable.

The Court also noted the reply of Captain Ali Shtino to a question put by it; this reply shows that the witness, who had been called on to replace the

Coastal Defence Commander for a period of thirteen to fifteen days, immediately before the events of October 22nd, had received the following order: "That the look-out posts must inform me of every movement [in the Corfu Channel], and that no action would be taken on our part."

The telegrams sent by the Albanian Government on November 13th and November 27th, 1946, to the Secretary-General of the United Nations, at a time when that Government was fully aware of the discovery of the minefield in Albanian territorial waters, are especially significant of the measures taken by the Albanian Government. In the first telegram, that Government raised the strongest protest against the movements and actibity of British naval units in its territorial waters on November 12th and 13th, 1946, without even mentioning the existence of a minefield in these waters. In the second, it repeats its accusations against the United Kingdom, without in any way protesting against the laying of this minefield which, if effected without Albania's consent, constituted a very serious violation of her sovereignty.

Another indication of the Albanian Government's knowledge consists in the fact that that Government did not notify the presence of mines in its waters, at the moment when it must have known this, at the latest after the sweep on November 13th, and further, whereas the Greek Government immediately appointed a Commission to inquire into the events of October 22nd, the Albanian Government took no decision of such a nature, nor did it proceed to the judicial investigation incumbent, in such a case, on the territorial sovereign.

This attitude does not seem reconcilable with the alleged ignorance of the Albanian authorities that the minefield had been laid in Albanian territorial

waters. It could be explained if the Albanian Government, while knowing of the minelaying, desired the circumstances of the operation to remain secret.

2. As regards the possibility of observing minelaying from the Albanian coast, the Court regards the following facts, relating to the technical conditions of a secret minelaying and to the Albanian surveillance, as particularly important.

The Bay of Saranda and the channel used by shipping through the Strait are, from their geographical configuration, easily watched; the entrance of the bay is dominated by heights offering excellent observation points, both over the bay and over the Strait; whilst the channel throughout is close to the Albanian coast. The laying of a minefield in these waters could hardly fail to have been observed by the Albanian coastal defences.

On this subject, it must first be said that the minelaying operation itself must have required a certain time. The method adopted required, according to the Experts of the Court, the methodical and well thought-out laying of two rows of mines that had clearly a combined offensive and defensive purpose: offensive, to prevent the passage, through the Channel, of vessels drawing ten feet of water or more; defensive, to prevent vessels of the same draught from entering the Bay of Saranda. The report of the Experts reckons the time that the minelayers would have been in the waters, between Cape Kiephali and St. George's Monastery, at between two and two and a half hours. This is sufficient time to attract the attention of the observation posts, placed, as the Albanian Government stated, at Cape Kiephali and St. George's Monastery.

The facilities for observation from the coast are confirmed by the two following circumstances: the distance of the nearest mine from the coast was only

500 metres; the minelayers must have passed at not more than about 500 metres from the coast between Denta Point and St. George's Monastery.

Being anxious to obtain any technical information that might guide it in its search for the truth, the Court submitted the following question to the Experts appointed by it:

> On the assumption that the mines discovered on November 13th, 1946, were laid at some date within the few preceding months, whoever may have laid them, you are requested to examine the information available regarding (*a*) the number and the nature of the mines, (*b*) the means for laying them, and (*c*) the time required to do so, having regard to the different states of the sea, the conditions of the locality, and the different weather conditions, and to ascertain whether it is possible in that way to draw any conclusions, and, if so, what conclusions, in regard to:
>
> (1) the means employed for laying the minefield discovered on November 13th, 1946, and
>
> (2) the possibility of mooring those mines with those means without the Albanian authorities being aware of it, having regard to the extent of the measures of vigilance existing in the Saranda region.

As the first Report submitted by the Experts did not seem entirely conclusive, the Court, by a decision of January 17th, 1949, asked the Experts to go to Saranda and to verify, complete and, if necessary, modify their answers. In this way, observations were made and various experiments carried out on the spot, in the presence of the experts of the Parties and of Albanian officials, with a view to estimating the possibility of the minelaying having been observed by the Albanian look-out posts. On this subject reference must be made to a test of visibility by night, carried out on the evening of January 28th, 1949, at St. George's Monastery. A motor ship, 27 metres long, and with no bridge, wheel-house, or funnel, and very low on the water, was used. The

ship was completely blacked out, and on a moonless night, i.e., under the most favourable conditions for avoiding discovery, it was clearly seen and heard from St. George's Monastery. The noise of the motor was heard at a distance of 1,800 metres, and the ship itself was sighted at 670 metres and remained visible up to about 1,900 metres.

The Experts Report on this visit stated that:

> The Experts consider it to be indisputable that if a normal look-out was kept at Cape Kiephali, Denta Point, and St. George's Monastery, and if the look-outs were equipped with binoculars as has been stated, under normal weather conditions for this area, the minelaying operations shown in Annex 9 to the United Kingdom Memorial must have been noticed by these coastguards.

The Court cannot fail to give great weight to the opinion of the Experts who examined the locality in a manner giving every guarantee of correct and impartial information. Apart from the existence of a look-out post at Cape Denta, which has not been proved, the Court, basing itself on the declarations of the Albanian Government that look-out posts were stationed at Cape Kiephali and St. George's Monastery, refers to the following conclusions in the Experts' Report: (1) that in the case of minelaying from the North towards the South, the minelayers would have been seen from Cape Kiephali; (2) in the case of minelaying from the South, the minelayers would have been seen from Cape Kiephali and St. George's Monastery.

From all the facts and observations mentioned above, the Court draws the conclusion that the laying of the minefield which caused the explosions on October 22nd, 1946, could not have been accomplished without the knowledge of the Albanian Government.

The obligations resulting for Albania from this

knowledge are not disputed between the Parties. Counsel for the Albanian Government expressly recognized that [*translation*] "if Albania had been informed of the operation before the incidents of October 22nd, and in time to warn the British vessels and shipping in general of the existence of mines in the Corfu Channel, her responsibility would be involved. . . .".

The obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations are based not on the Hague Convention of 1907, No. VIII, which is applicable in time of war, but on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war; the principle of the freedom of maritime communication; and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.

In fact, Albania neither notified the existence of the minefield, nor warned the British warships of the danger they were approaching.

But Albania's obligation to notify shipping of the existence of mines in her waters depends on her having obtained knowledge of that fact in sufficient time before October 22nd; and the duty of the Albanian coastal authorities to warn the British ships depends on the time that elapsed between the moment that these ships were reported and the moment of the first explosion.

On this subject, the Court makes the following observations. As has already been stated, the Parties agree that the mines were recently laid. It must

be concluded that the minelaying, whatever may have been its exact date, was done at a time when there was a close Albanian surveillance over the Strait. If it be supposed that it took place at the last possible moment, i.e., in the night of October 21st-22nd, the only conclusion to be drawn would be that a general notification to the shipping of all States before the time of the explosions would have been difficult, perhaps even impossible. But this would certainly not have prevented the Albanian authorities from taking, as they should have done, all necessary steps immediately to warn ships near the danger zone, more especially those that were approaching that zone. When on October 22nd about 13.00 hours the British warships were reported by the look-out post at St. George's Monastery to the Commander of the Coastal Defences as approaching Cape Long, it was perfectly possible for the Albanian authorities to use the interval of almost two hours that elapsed before the explosion affecting *Saumarez* (14.53 hours or 14.55 hours) to warn the vessels of the danger into which they were running.

In fact, nothing was attempted by the Albanian authorities to prevent the disaster. These grave omissions involve the international responsibility of Albania.

The Court therefore reaches the conclusion that Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life which resulted from them, and that there is a duty upon Albania to pay compensation to the United Kingdom.

* * * * *

In the final submissions contained in its oral reply, the United Kingdom Government asked the Court

to give judgment that, as a result of the breach by the Albanian Government of its obligations under international law, it had sustained damages amounting to £875,000.

In the last oral statement submitted in its name, the Albanian Government, for the first time, asserted that the Court would not have jurisdiction, in virtue of the Special Agreement to assess the amount of compensation. No reason was given in support of this new assertion, and the United Kingdom Agent did not ask leave to reply. The question of the Court's jurisdiction was not argued between the Parties.

In the first question of the Special Agreement the Court is asked:

(i) Is Albania under international law responsible for the explosions and for the damage and loss of human life which resulted from them, and

(ii) is there any duty to pay compensation?

This text gives rise to certain doubts. If point (i) is answered in the affirmative, it follows from the establishment of responsibility that compensation is due, and it would be superfluous to add point (ii) unless the Parties had something else in mind than a mere declaration by the Court that compensation is due. It would indeed be incompatible with the generally accepted rules of interpretation to admit that a provision of this sort occurring in a special agreement should be devoid of purport or effect. In this connexion, the Court refers to the views expressed by the Permanent Court of International Justice with regard to similar questions of interpretation. In Advisory Opinion No. 13 of July 23rd 1926, that Court said (Series B., No. 13, p. 19): "But, so far as concerns the specific question of competence now pending, it may suffice to observe that the Court, in determining the nature and scope of a

measure, must look to its practical effect rather than to the predominant motive that may be conjectured to have inspired it." In its Order of August 19th, 1929, in the Free Zones case, the Court said (Series A., No. 22, p. 13): "in case of doubt, the clauses of a special agreement by which a dispute is referred to the Court must, if it does not involve doing violence to their terms, be construed in a manner enabling the clauses themselves to have appropriate effects".

The Court thinks it necessary to refer to the different stages of the procedure. In its Resolution of April 9th, 1947, the Security Council recommended that the two Governments should immediately refer "the dispute" to the Court. This Resolution had without doubt for its aim the final adjustment of the whole dispute. In pursuance of the Resolution, the Government of the United Kingdom filed an Application in which the Court was asked, *inter alia*, to "determine the reparation or compensation", and in its Memorial that Government stated the various sums claimed. The Albanian Government thereupon submitted a Preliminary Objection, which was rejected by the Court by its Judgment of March 25th, 1948. Immediately after this judgment was delivered, the Agents of the Parties notified the Court of the conclusion of a Special Agreement. Commenting upon this step taken by the Parties, the Agent of the Albanian Government said that in the circumstances of the present case a special agreement on which "the whole procedure" should be based was essential. He further said [*translation*]: "As I have stated on several occasions, it has always been the intention of the Albanian Government to respect the decision taken by the Security Council on April 9th, 1947, in virtue of which the present Special Agreement is submitted to the International Court of Justice."

Neither the Albanian nor the United Kingdom Agent suggested in any way that the Special Agreement had limited the competence of the Court in this matter to a decision merely upon the principle of compensation or that the United Kingdom Government had abandoned an important part of its original claim. The main object both Parties had in mind when they concluded the Special Agreement was to establish a complete equality between them by replacing the original procedure based on a unilateral Application by a procedure based on a Special Agreement. There is no suggestion that this change as to procedure was intended to involve any change with regard to the merits of the British claim as originally presented in the Application and Memorial. Accordingly, the Court, after consulting the Parties, in its Order of March 26th, 1948, maintained the United Kingdom's Memorial, filed previously, "with statements and submissions". These submissions included the claim for a fixed sum of compensation.

The subsequent attitude of the Parties shows that it was not their intention, by entering into the Special Agreement, to preclude the Court from fixing the amount of the compensation. In its Reply (paragraph 71) the United Kingdom Government maintained the submissions contained in paragraph 96 of its Memorial, including the claim for a fixed amount of reparation. This claim was expressly repeated in the final United Kingdom submissions. In paragraph 52 of its Counter-Memorial, the Albanian Government stated that it had no knowledge of the loss of human life and damage to ships, but it did not contest the Court's competence to decide this question. In the Rejoinder, paragraph 96, that Government declared that, owing to its claim for the dismissal of the case, it was unnecessary for it to

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examine the United Kingdom's claim for reparation. [*Translation.*] "It reserves the right if need be, to discuss this point which should obviously form the subject of an expert opinion." Having regard to what is said above as to the previous attitude of that Government, this statement must be considered as an implied acceptance of the Court's jurisdiction to decide this question.

It may be asked why the Parties, when drafting the Special Agreement, did not expressly ask the Court to assess the amount of the damage, but used the words: "and is there any duty to pay compensation?" It seems probable that the explanation is to be found in the similarity between this clause and the corresponding clause in the second part of the Special Agreement: "and is there any duty to give satisfaction?"

The Albanian Government has not disputed the competence of the Court to decide what kind of *satisfaction* is due under this part of the Agreement. The case was argued on behalf of both Parties on the basis that this question should be decided by the Court. In the written pleadings, the Albanian Government contended that it was entitled to apologies. During the oral proceedings, Counsel for Albania discussed the question whether a pecuniary satisfaction was due. As no damage was caused, he did not claim any sum of money. He concluded [*translation*]: "What we desire is the declaration of the Court from a legal point of view."

If, however, the Court is competent to decide what kind of *satisfaction* is due to Albania under the second part of the Special Agreement, it is difficult to see why it should lack competence to decide the amount of *compensation* which is due to the United Kingdom under the first part. The clauses used in the Special Agreement are parallel. It cannot be

supposed that the Parties, while drafting these clauses in the same form, intended to give them opposite meanings—the one as giving the Court jurisdiction, the other as denying such jurisdiction.

As has been said above, the Security Council, in its Resolution of April 9th, 1947, undoubtedly intended that the whole dispute should be decided by the Court. If, however, the Court should limit itself to saying that there is a duty to pay compensation without deciding what amount of compensation is due, the dispute would not be finally decided. An important part of it would remain unsettled. As both Parties have repeatedly declared that they accept the Resolution of the Security Council, such a result would not conform with their declarations. It would not give full effect to the Resolution, but would leave open the possibility of a further dispute.

For the foregoing reasons, the Court has arrived at the conclusion that it has jurisdiction to assess the amount of the compensation. This cannot, however, be done in the present Judgment. The Albanian Government has not yet stated which items, if any, of the various sums claimed it contests, and the United Kingdom Government has not submitted its evidence with regard to them.

The Court therefore considers that further proceedings on this subject are necessary; the order and time-limits of these proceedings will be fixed by the Order of this date.

* * * * *

In the second part of the Special Agreement, the following question is submitted to the Court:

(2) Has the United Kingdom under international law violated the sovereignty of the Albanian People's Republic by reason of the acts of the Royal Navy in Albanian waters on the 22nd

October and on the 12th and 13th November 1946 and is there any duty to give satisfaction?

The Court will first consider whether the sovereignty of Albania was violated by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946.

On May 15th, 1946, the British cruisers *Orion* and *Superb*, while passing southward through the North Corfu Channel, were fired at by an Albanian battery in the vicinity of Saranda. It appears from the report of the commanding naval officer dated May 29th, 1946, that the firing started when the ships had already passed the battery, and were moving away from it; that from 12 to 20 rounds were fired; that the firing lasted 12 minutes and ceased only when the ships were out of range; but that the ships were not hit although there were a number of "shorts" and of "overs". An Albanian note of May 21st states that the Coastal Commander ordered a few shots to be fired in the direction of the ships "in accordance with a General Order founded on international law".

The United Kingdom Government at once protested to the Albanian Government, stating that innocent passage through straits is a right recognized by international law. There ensued a diplomatic correspondence in which the Albanian Government asserted that foreign warships and merchant vessels had no right to pass through Albanian territorial waters without prior notification to, and the permission of, the Albanian authorities. This view was put into effect by a communication of the Albanian Chief of Staff, dated May 17th, 1946, which purported to subject the passage of foreign warships and merchant vessels in Albanian territorial waters to previous notification to and authorization by the Albanian Government. The diplomatic correspondence continued, and culminated in a United Kingdom

note of August 2nd, 1946, in which the United Kingdom Government maintained its view with regard to the right of innocent passage through straits forming routes for international maritime traffic between two parts of the high seas. The note ended with the warning that if Albanian coastal batteries in the future opened fire on any British warship passing through the Corfu Channel, the fire would be returned.

The contents of this note were, on August 1st, communicated by the British Admiralty to the Commander-in-Chief, Mediterranean, with the instruction that he should refrain from using the Channel until the note had been presented to the Albanian Government. On August 10th, he received from the Admiralty the following telegram: "The Albanians have now received the note. North Corfu Strait may now be used by ships of your fleet, but only when essential and with armament in fore and aft position. If coastal guns fire at ships passing through the Strait, ships should fire back." On September 21st, the following telegram was sent by the Admiralty to the Commander-in-Chief, Mediterranean: "Establishment of diplomatic relations with Albania is again under consideration by His Majesty's Government who wish to know whether the Albanian Government have learnt to behave themselves. Information is requested whether any ships under your command have passed through the North Corfu Strait since August and, if not, whether you intend them to do so shortly." The Commander-in-Chief answered the next day that his ships had not done so yet, but that it was his intention that *Mauritius* and *Leander* and two destroyers should do so when they departed from Corfu on October 22nd.

It was in such circumstances that these two cruisers together with the destroyers *Saumarez* and

Volage were sent through the North Corfu Strait on that date.

The Court will now consider the Albanian contention that the United Kingdom Government violated Albanian sovereignty by sending the warships through this Strait without the previous authorization of the Albanian Government.

It is, in the opinion of the Court, generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of a coastal State, provided that the passage is *innocent*. Unless otherwise prescribed in an international convention, there is no right for a coastal State to prohibit such passage through straits in time of peace.

The Albanian Government does not dispute that the North Corfu Channel is a strait in the geographical sense; but it denies that this Channel belongs to the class of international highways through which a right of passage exists, on the grounds that it is only of secondary importance and not even a necessary route between two parts of the high seas, and that it is used almost exclusively for local traffic to and from the ports of Corfu and Saranda.

It may be asked whether the test is to be found in the volume of traffic passing through the Strait or in its greater or lesser importance for international navigation. But in the opinion of the Court the decisive criterion is rather its geographical situation as connecting two parts of the high seas and the fact of its being used for international navigation. Nor can it be decisive that this Strait is not a necessary route between two parts of the high seas, but only an alternative passage between the Ægean and the Adriatic Seas. It has nevertheless been a useful

route for international maritime traffic. In this respect, the Agent of the United Kingdom Government gave the Court the following information relating to the period from April 1st, 1936, to December 31st, 1937: "The following is the total number of ships putting in at the Port of Corfu after passing through or just before passing through the Channel. During the period of one year nine months, the total number of ships was 2,884. The flags of the ships are Greek, Italian, Roumanian, Yugoslav, French, Albanian and British. Clearly, very small vessels are included, as the entries for Albanian vessels are high, and of course one vessel may make several journeys, but 2,884 ships for a period of one year nine months is quite a large figure. These figures relate to vessels visited by the Customs at Corfu and so do not include the large number of vessels which went through the Strait without calling at Corfu at all." There were also regular sailings through the Strait by Greek vessels three times weekly, by a British ship fortnightly, and by two Yugoslav vessels weekly and by two others fortnightly. The Court is further informed that the British Navy has regularly used this Channel for eighty years or more, and that it has also been used by the navies of other States.

One fact of particular importance is that the North Corfu Channel constitutes a frontier between Albania and Greece, that a part of it is wholly within the territorial waters of these States, and that the Strait is of special importance to Greece by reason of the traffic to and from the port of Corfu.

Having regard to these various considerations, the Court has arrived at the conclusion that the North Corfu Channel should be considered as belonging to the class of international highways through which passage cannot be prohibited by a coastal State in time of peace.

On the other hand, it is a fact that the two coastal States did not maintain normal relations, that Greece had made territorial claims precisely with regard to a part of Albanian territory bordering on the Channel, that Greece had declared that she considered herself technically in a state of war with Albania, and that Albania, invoking the danger of Greek incursions, had considered it necessary to take certain measures of vigilance in this region. The Court is of opinion that Albania, in view of these exceptional circumstances, would have been justified in issuing regulations in respect of the passage of warships through the Strait, but not in prohibiting such passage or in subjecting it to the requirement, of special authorization.

For these reasons the Court is unable to accept the Albanian contention that the Government of the United Kingdom has violated Albanian sovereignty by sending the warships through the Strait without having obtained the previous authorization of the Albanian Government.

In these circumstances, it is unnecessary to consider the more general question, much debated by the Parties, whether States under international law has a right to send warships in time of peace through territorial waters not included in a strait.

The Albanian Government has further contended that the sovereignty of Albania was violated because the passage of the British warships on October 22nd, 1946, was not an *innocent passage*. The reasons advanced in support of this contention may be summed up as follows: The passage was not an ordinary passage, but a political mission; the ships were manoeuvring and sailing in diamond combat formation with soldiers on board; the position of the guns was not consistent with innocent passage; the vessels passed with crews at action stations; the

number of the ships and their armament surpassed what was necessary in order to attain their object and showed an intention to intimidate and not merely to pass; the ships had received orders to observe and report upon the coastal defences and this order was carried out.

It is shown by the Admiralty telegram of September 21st, cited above, and admitted by the United Kingdom Agent, that the object of sending the warships through the Strait was not only to carry out a passage for purposes of navigation, but also to test Albania's attitude. As mentioned above, the Albanian Government, on May 15th, 1946, tried to impose by means of gunfire its view with regard to the passage. As the exchange of diplomatic notes did not lead to any clarification, the Government of the United Kingdom wanted to ascertain by other means whether the Albanian Government would maintain its illegal attitude and again impose its view by firing at passing ships. The legality of this measure taken by the Government of the United Kingdom cannot be disputed, provided that it was carried out in a manner consistent with the requirements of international law. The "mission" was designed to affirm a right which had been unjustly denied. The Government of the United Kingdom was not bound to abstain from exercising its right of passage, which the Albanian Government had illegally denied.

It remains, therefore, to consider whether the *manner* in which the passage was carried out was consistent with the principle of innocent passage and to examine the various contentions of the Albanian Government in so far as they appear to be relevant.

When the Albanian coastguards at St. George's Monastery reported that the British warships were sailing in combat formation and were manoeuvring,

they must have been under a misapprehension. It is shown by the evidence that the ships were not proceeding in combat formation, but in line, one after the other, and that they were not manoeuvring until after the first explosion. Their movements thereafter were due to the explosions and were made necessary in order to save human life and the mined ships. It is shown by the evidence of witnesses that the contention that soldiers were on board must be due to a misunderstanding probably arising from the fact that the two cruisers carried their usual detachment of marines.

It is known from the above-mentioned order issued by the British Admiralty on August 10th, 1946, that ships, when using the North Corfu Strait, must pass with armament in fore and aft position. That this order was carried out during the passage on October 22nd is stated by the Commander-in-Chief, Mediterranean, in a telegram of October 26th to the Admiralty. The guns were, he reported, "trained fore and aft, which is their normal position at sea in peace time, and were not loaded". It is confirmed by the commanders of *Saumarez* and *Volage* that the guns were in this position before the explosions. The navigating officer on board *Mauritius* explained that all guns on that cruiser were in their normal stowage position. The main guns were in the line of the ship, and the anti-aircraft guns were pointing outwards and up into the air, which is the normal position of these guns on a cruiser both in harbour and at sea. In the light of this evidence, the Court cannot accept the Albanian contention that the position of the guns was inconsistent with the rules of innocent passage.

In the above-mentioned telegram of October 26th, the Commander-in-Chief reported that the passage "was made with ships at action stations in order that they might be able to retaliate quickly if fired upon

again". In view of the firing from the Albanian battery on May 15th, this measure of precaution cannot, in itself, be regarded as unreasonable. But four warships—two cruisers and two destroyers—passed in this manner, with crews at action stations, ready to retaliate quickly if fired upon. They passed one after another through this narrow channel, close to the Albanian coast, at a time of political tension in this region. The intention must have been, not only to test Albania's attitude, but at the same time to demonstrate such force that she would abstain from firing again on passing ships. Having regard, however, to all the circumstances of the case, as described above, the Court is unable to characterize these measures taken by the United Kingdom authorities as a violation of Albania's sovereignty.

The Admiralty Chart, Annex 21 to the Memorial, shows that coastal defences in the Saranda region had been observed and reported. In a report of the commander of *Volage*, dated October 23rd, 1946—a report relating to the passage on the 22nd—it is stated: "The most was made of the opportunities to study Albanian defences at close range. These included, with reference to XCU . . . ."—and he then gives a description of some coastal defences.

In accordance with Article 49 of the Statute of the Court and Article 54 of its Rules, the Court requested the United Kingdom Agent to produce the documents referred to as XCU for the use of the Court. Those documents were not produced, the Agent pleading naval secrecy; and the United Kingdom witnesses declined to answer questions relating to them. It is not therefore possible to know the real content of these naval orders. The Court cannot, however, draw from this refusal to produce the orders any conclusions differing from those to which the actual events gave rise. The United Kingdom Agent

stated that the instructions in these orders related solely to the contingency of shots being fired from the coast—which did not happen. If it is true, as the commander of *Voltage* said in evidence, that the orders contained information concerning certain positions from which the British warships might have been fired at, it cannot be deduced therefrom that the vessels had received orders to reconnoitre Albanian coastal defences. Lastly, as the Court has to judge of the innocent nature of the passage, it cannot remain indifferent to the fact that, though two warships struck mines, there was no reaction, either on their part or on that of the cruisers that accompanied them.

With regard to the observations of coastal defences made after the explosions, these were justified by the fact that two ships had just been blown up and that, in this critical situation, their commanders might fear that they would be fired on from the coast, as on May 15th.

Having thus examined the various contentions of the Albanian Government in so far as they appear to be relevant, the Court has arrived at the conclusion that the United Kingdom did not violate the sovereignty of Albania by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946.

* * * * *

In addition to the passage of the United Kingdom warships on October 22nd, 1946, the second question in the Special Agreement relates to the acts of the Royal Navy in Albanian waters on November 12th and 13th, 1946. This is the minesweeping operation called "Operation Retail" by the Parties during the proceedings. This name will be used in the present Judgment.

After the explosions of October 22nd, the United

Kingdom Government sent a note to the Albanian Government, in which it announced its intention to sweep the Corfu Channel shortly. The Albanian reply, which was received in London on October 31st, stated that the Albanian Government would not give its consent to this unless the operation in question took place outside Albanian territorial waters. Meanwhile, at the United Kingdom Governments request, the International Centre Mine Clearance Board decided, in a resolution of November 1st, 1946, that there should be a further sweep of the Channel, subject to Albania's consent. The United Kingdom Government having informed the Albanian Government, in a communication of November 10th, that the proposed sweep would take place on November 12th, the Albanian Government replied on the 11th, protesting against this "unilateral decision of His Majesty's Government". It said it did not consider it inconvenient that the British fleet should undertake the sweeping of the channel of navigation, but added that, before sweeping was carried out, it considered it indispensable to decide what area of the sea should be deemed to constitute this channel, and proposed the establishment of a Mixed Commission for the purpose. It ended by saying that any sweeping undertaken without the consent of the Albanian Government outside the channel thus constituted, i.e., inside Albanian territorial waters where foreign warships have no reason to sail, could only be considered as a deliberate violation of Albanian territory and sovereignty.

After this exchange of notes, "Operation Retail" took place on November 12th and 13th. Commander Mestre, of the French Navy, was asked to attend as observer, and was present at the sweep on November 13th. The operation was carried out under the protection of an important covering force composed of

an aircraft carrier, cruisers and other war vessels. This covering force remained throughout the operation at a certain distance to the west of the Channel, except for the frigate *St. Bride's Bay*, which was stationed in the Channel south-east of Cape Kiephali. The sweep began in the morning of November 13th, at about 9 o'clock, and ended in the afternoon near nightfall. The area swept was Albanian territorial waters, and within the limits of the channel previously swept.

The United Kingdom Government does not dispute that "Operation Retail" was carried out against the clearly expressed wish of the Albanian Government. It recognizes that the operation had not the consent of the international mine clearance organizations, that it could not be justified as the exercise of a right of innocent passage, and lastly that, in principle, international law does not allow a State to assemble a large number of warships in the territorial waters of another State and to carry out minesweeping in those waters. The United Kingdom Government states that the operation was one of extreme urgency, and that it considered itself entitled to carry it out without anybody's consent.

The United Kingdom Government put forward two reasons in justification. First, the Agreement of November 22nd, 1945, signed by the Governments of the United Kingdom, France, the Soviet Union and the United States of America, authorizing regional mine clearance organizations, such as the Mediterranean Zone Board, to divide the sectors in their respective zones amongst the States concerned for sweeping. Relying on the circumstance that the Corfu Channel was in the sector allotted to Greece by the Mediterranean Zone Board on November 5th, i.e., before the signing of the above-mentioned Agreement, the United Kingdom Government

put forward a permission given by the Hellenic Government to resweep the navigable channel.

The Court does not consider this argument convincing.

It must be noted that, as the United Kingdom Government admits, the need for resweeping the Channel was not under consideration in November 1945; for previous sweeps in 1944 and 1945 were considered as having effected complete safety. As a consequence, the allocation of the sector in question to Greece, and, therefore, the permission of the Hellenic Government which is relied on, were both of them merely nominal. It is also to be remarked that Albania was not consulted regarding the allocation to Greece of the sector in question, despite the fact that the Channel passed through Albanian territorial waters.

But, in fact, the explosions of October 22nd, 1946, in a channel declared safe for navigation, and one which the United Kingdom Government, more than any other government, had reason to consider safe, raised quite a different problem from that of a routine sweep carried out under the orders of the mineclearance organizations. These explosions were suspicious; they raised a question of responsibility.

Accordingly, this was the ground on which the United Kingdom Government chose to establish its main line of defence. According to that Government, the *corpora delicti* must be secured as quickly as possible, for fear they should be taken away, without leaving traces, by the authors of the minelaying or by the Albanian authorities. This justification took two distinct forms in the United Kingdom Government's arguments. It was presented first as a new and special application of the theory of intervention, by means of which the State intervening would secure possession of evidence in the

territory of another State, in order to submit it to an international tribunal and thus facilitate its task.

The Court cannot accept such a line of defence. The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the adminstration of international justice itself.

The United Kingdom Agent, in his speech in reply, has further classified "Operation Retail" among methods of self-protection or self-help. The Court cannot accept this defence either. Between independent States, respect for territorial sovereignty is an essential foundation of international relations. The Court recognizes that the Albanian Government's complete failure to carry out its duties after the explosions, and the dilatory nature of its diplomatic notes, are extenuating circumstances for the action of the United Kingdom Government. But to ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy constituted a violation of Albanian sovereignty.

This declaration is in accordance with the request made by Albania through her Counsel, and is in itself appropriate satisfaction.

The method of carrying out "Operation Retail" has also been criticized by the Albanian Government, the main ground of complaint being that the United Kingdom, on that occasion, made use of an unnecessarily large display of force, out of proportion to

the requirements of the sweep. The Court thinks that this criticism is not justified. It does not consider that the action of the British Navy was a demonstration of force for the purpose of exercising political pressure on Albania. The responsible naval commander, who kept his ships at a distance from the coast, cannot be reproached for having employed an important covering force in a region where twice within a few months his ships had been the object of serious outrages.

For these reasons, the Court, on the first question put by the Special Agreement of March 25th, 1948, by eleven votes to five,

Gives judgment that the People's Republic of Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life that resulted therefrom; and by ten votes to six,

Reserves for further consideration the assessment of the amount of compensation and regulates the procedure on this subject by an Order dated this day;

On the second question put by the Special Agreement of March 25th, 1948, by fourteen votes to two,

Gives judgment that the United Kingdom did not violate the sovereignty of the People's Republic of Albania by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946; and unanimously

Gives judgment that by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the People's Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction.

Done in French and English, the French text being

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authorative, at the Peace Palace, The Hague, this ninth day of April, one thousand nine hundred and forty-nine, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the United Kingdom of Great Britain and Northern Ireland and of the People's Republic of Albania respectively.

(Signed) J. G. GUERRERO,
Acting President.
(Signed) E. HAMBRO,
Registrar.

Judge Basdevant, President of the Court, whilst accepting the whole of the operative part of the Judgment, feels bound to state that he cannot accept the reasons given by the Court in support of its jurisdiction to assess the amount of compensation, other reasons being in his opinion more decisive.

Judge Zoricic declares that he is unable to agree either with the operative clause or with the reasons for the Judgment in the part relating to Albania's responsibility; the arguments submitted, and the facts established are not such as to convince him that the Albanian Government was, or ought to have been, aware, before November 13th, 1946, of the existence of the minefield discovered on that date. On the one hand, the attitude adopted by a government when confronted by certain facts varies according to the circumstances, to its mentality, to the means at its disposal and to its experience in the conduct of public affairs. But it has not been contested that, in 1946, Albania had a new Government possessing no experience in international practice. It is therefore difficult to draw any inferences whatever from its attitude. Again, the conclusion of the Experts that the operation of laying the mines must

have been seen is subject to an express reservation: it would be necessary to assume the realization of several conditions, in particular the maintenance of normal look-out posts at Cape Kiephali, Denta Point and San Giorgio Monastery, and the existence of normal weather conditions at the date. But the Court knows neither the date on which the mines were laid nor the weather conditions prevailing on that date. Furthermore, no proof has been furnished of the presence of a look-out post on Denta Point, though that, according to the Experts, would have been the only post which would necessarily have observed the minelaying. On the other hand, the remaining posts would merely have been able to observe the passage of the ships, and there is no evidence to show that they ought to have concluded that the ships were going to lay mines. According to the Experts, these posts could neither have seen nor heard the minelaying, because the San Giorgio Monastery was 2,000 m. from the nearest mine and Cape Kiephali was several kilometres away from it. As a result, the Court is confronted with suspicions, conjectures and presumptions, the foundations for which, in Judge Zoricic's view, are too uncertain to justify him in imputing to a State the responsibility for a grave delinquency in international law.

Judge Alvarez, whilst concurring in the Judgment of the Court, has availed himself of the right conferred on him by Article 57 of the Statute and appended to the Judgment a statement of his individual opinion.

Judges Winiarski, Badawi Pasha, Krylov and Azevedo, and Judge *ad hoc* Ecer, declaring that they are unable to concur in the Judgment of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to

the Judgment statements of their dissenting opinions.

[Initialed] J. G. G.
[Initialed] E. H.

[Individual and dissenting opinions omitted.]

2. United States Laws and Regulations

a. Harbors Closed to Foreign Vessels

Note. By an Act of 15 May 1820 (3 Stat. 597) it was made unlawful for a period of two years "for any foreign armed vessels to enter any harbour belonging to the United States, excepting only those of Portland, Boston, New London, New York, Philadelphia, Norfolk, Smithville, in North Carolina, Charleston, and Mobile; unless when such vessels shall be forced in by distress, by the dangers of the sea, or by being pursued by an enemy, and be unable to make any of the ports above mentioned." The President was given authority to employ such part of the land and naval forces of the United States or the militia thereof as he might deem necessary to enforce these provisions.

A report of 20 February 1904 by the General Board of the Navy, approved by the Secretary of the Navy, stated,

"The General Board is of the opinion that with the exception of the below-named ports, no restrictions should be placed on the visits of foreign men-of-war or other public vessels, either as to number or period of stay, in ports within the United States or under their control; neither should it be required that previous permission must be obtained.

"The General Board is further of the opinion that before visiting any of the following-named ports all foreign men-of-war or public vessels should be required to ask permission from the Secretary of the Navy, through their respective Ministers, and the State Department:

"Tortugas, Florida.
"Great Harbor, Culebra.
"Guantanamo, Cuba.
"Pearl Harbor, Hawaii.
"Guam.
"Subig Bay, Philippine Islands.

"It is, of course, understood that any foreign vessel, before entering the actual limits of a navy-yard in any port of the United States, would first apply for permission" [3 Laws Relating to the Navy (1945), p. 1865].

This report was transmitted by the Secretary of the Navy to the Secretary of State, who by a circular of 2 March 1904 instructed the diplomatic officers of the United States to communicate the report to the governments to which they were accredited, "with a view to indicate the present policy of this Government regarding the visits of foreign men-of-war to the ports of the United States or those under the control of this Government." In a supplemental report of 28 April 1904, also approved by the Secretary of the Navy, the General Board recommended that the ports and anchorages of the Kiska Islands be added to the list. This report was likewise transmitted by the Secretary of the Navy to the Secretary of State, who by a circular of 30 April 1904 instructed the diplomatic officers of the United States to inform the governments to which they were

accredited "that the ports and anchorages of the Kiska Islands in the Aleutian Archipelago are added to the list of ports which foreign men-of-war must obtain previous permission to visit."

On 23 September 1912 the President of the United States issued Executive Order No. 1613, reproduced below, prohibiting foreign vessels of commerce as well as foreign national vessels from entering seven named harbors, except by special authority of the Navy Department in each case. This order is still in force.

Executive Order, 23 September 1912 [3 Laws Relating to the Navy (1945), p. 1864.]

It is hereby ordered that the following named harbors, viz;

Tortugas, Florida;
Great Harbor, Culebra;
Guantanamo Naval Station, Cuba;
Pearl Harbor, Hawaii;
Guam;
Subig Bay, Philippine Islands;
Kiska, Aleutian Islands;

are not, and that they shall not be made, subports of entry for foreign vessels of commerce, and that said harbors shall not be visited by any commercial or privately owned vessel of foreign registry, nor by any foreign national vessel, except by special authority of the United States Navy Department in each case.

b. Defensive Sea Areas

Note. By an Act approved on 4 March 1917, Section 44 of the Criminal Code was amended to authorize the President by executive order to establish defensive sea areas from time to time as may be necessary in his discretion for the purposes of national defense, and any violation of the President's order or regulation governing persons or vessels within the limits of such defensive sea areas was made punishable.

Thirty-three defensive sea areas were created by five executive orders in 1917 and 1918; the texts of these orders have been reproduced in Naval War College, International Law Documents, 1917, pp. 233, 240, 241; 1918, p. 164. These defensive sea areas were discontinued by an executive order of 25 January 1919. Some of the areas included parts of the high seas outside of territorial waters. The regulations governing these areas provided for the designation of entrances for incoming and outgoing vessels in the neighborhood of each defensive sea area; vessels desiring to cross such areas were required to proceed to the vicinity of the entrance and to receive the authorization of a harbor-entrance patrol before entering. Vessels othet than public vessels of the United States were forbidden to cross a defensive sea area except between sunset and sunrise, or during the prevalance of weather conditions which rendered navigation difficult or dangerous. Masters of vessels or other persons within the vicinity of a defensive sea area who violated the regulations were subject to prosecution. Naval War College, International Law Documents, 1917, p. 237; 1943, p. 66.

Information is given here concerning the defensive sea areas established since 1918; in some cases they were designated as "naval defensive sea areas." Regulations applying to defensive sea areas generally were promulgated by Executive Order No. 8978 of 16 December 1941 (6 F. R. 6469), and by Executive Order No. 9275 of 23 November 1942 (7 F. R. 9767).

(1) *Defensive Sea Area in Chesapeake Bay* [1]

(Executive Order No. 5710, 14 September 1931; in force from 5 October to 20 October 1931.)

[Area:] Waters within a radius of 5 miles of latitude 37°43′12″, longitude 76°04′ in Chesapeake Bay near the southern end of Tangier Sound.

[Regulations:] No . . . vessel shall navigate within the areas herein created except such as are authorized by the Secretary of the Navy in connection with national defense operations or for other governmental purposes: *Provided*, *however*, That surface vessels following regular channels may navigate within the aforesaid defensive sea area but in no event within a radius of 2 miles of the point above stated.

[1] A naval air-space reservation was established at the same time in the air-space over the same area.

(2) *Defensive Sea Area off the Coast of North Carolina*

(Executive Order No. 5786, 30 January 1932, Laws Relating to the Navy (1945), p. 1883; still in force.)

[Area:] The following bounded waters off the coast of North Carolina and southeast of Kittyhawk Coast Guard Station, comprising approximately two-thirds of a square mile . . .

Beginning at a point of latitude 36°03′ N., longitude 75°37′ W.; thence to a point latitude 36°03′ N., longitude 75°36′ W.; thence to a point latitude 36°02′28″ N., longitude 75°36′ W.; thence to a point latitude 36°02′ N., longitude 75°36′8″ W.; and thence to point of beginning.

[Regulation:] At no time shall vessels or other craft be navigated within the area above defined except such as are authorized by the Secretary of the Navy.

(3) *San Clemente Island Naval Defensive Sea Area*

(Executive Order No. 7747, 20 November 1937, 2 F. R. 2534; amended by No. 8536, 6 September 1940, 5 F. R. 3606, and by No. 9787, 5 October 1946, 11 F. R. 11556; discontinued by No. 9894, 23 September 1947, 12 F. R. 6353.)

[Area:] The area of water surrounding San Clemente Island, California, extending from low-water mark out for a distance of three hundred yards beyond low-water mark, except in Wilson Cove, where it is to extend one hundred yards beyond low-water mark, and including that part of Pyramid Cove lying north of a line between a point one thousand yards south of China

Point light and a point three hundred yards south of Whitewashed Rock.

[Regulations:] At no time shall vessels or other craft be navigated within the defensive sea area above defined except such as are authorized by the Secretary of the Navy.

(4) *Pearl Harbor Defensive Sea Area*

(Executive Order No. 8143, 26 May 1939, 4 F. R. 2179; still in force.)

[Area:] The area of water in Pearl Harbor, Island of Oahu, Territory of Hawaii, lying between extreme high-water mark and the sea and in and about the entrance channel to said harbor, within an area bounded by the extreme high-water mark, a line bearing south true from the southwestern corner of the Puuloa Naval Reservation, a line bearing south true from Ahua Point Lighthouse, and a line bearing west true from a point three nautical miles due south true from Ahua Point Lighthouse.

[Regulations:] At no time shall any person (other than persons on public vessels of the United States) enter the defensive sea area above defined, nor shall any vessels or other craft (other than public vessels of the United States) be navigated within said defensive sea areas, unless authorized by the Secretary of the Navy.

(5) *Los Angeles-Long Beach Harbor Naval Defensive Sea Area*

(Executive Order No. 8403, 7 May 1940, 5 F. R. 1661, superseded by No. 8953, 27 November 1941, 6 F. R. 6123, discontinued by No. 9720, 8 May 1946, 11 F. R. 5105.)

[Area:] All United States territorial waters of Los Angeles-Long Beach Harbor and its approaches and tributaries from the contour line of extreme high water on the shores of these waters, as shown on the latest U. S. C. and G. S. charts, to the following seaward limits:

A line running along bearing 160° true from Whites Point, California, in approximate Latitude 33°42′61″ North, Longitude 118°19′ West, to the seaward limit of United States territorial waters;

A line running along bearing 210° true from a point on the shore of Huntington Beach, California, in Latitude 33°39′47″ North, Longitude 118°00′41″ West, to the seaward limit of United States territorial waters; and

A line running along the seaward limit of United States territorial waters between the above-described bearing lines.

[Regulations:] A vessel not proceeding under United States naval or other United States authorized supervision shall not enter or navigate the waters of the Los Angeles-Long Beach Harbor Naval Defensive Sea Area except during the daylight, when good visibility conditions prevail, and then only after specific permission has been obtained. Advance arrangements for entry into or navigation through or within the Los Angeles-Long Beach Harbor Naval Defensive Sea Area must be made, prefereably by application to a United States Naval District Headquarters in advance of sailing, or by radio or visual communication on approaching the seaward limits of the area. If radio telegraphy is used, the call "NQO" shall be made on a frequency of 500 kcs, and permission to enter the port requested. The name of the vessel, purpose of entry, and name of the master must be given in the request. If visual communications are used, the procedure shall be essentially the same.

A vessel entering or navigating the waters of the Los Angeles-Long Beach Harbor Naval Defensive Sea Area does so at its own risk.

Even though permission has been obtained, it is incumbent upon a vessel entering the Los Angeles-Long Beach Harbor Naval Defensive Sea Area to obey any further instructions received from the United States Navy or other United States authority.

A vessel may expect supervision of its movements within the Los Angeles-Long Beach Harbor Naval Defensive Sea Area, either through surface craft or aircraft. Such controlling surface craft and aircraft shall be identified by a prominent display of the Union Jack.

The loading or unloading by vessels of oil fuel or other inflammable or explosive materials shall be under the control of the local naval authority, who shall require such loading or unloading to be accomplished in such manner and at such times as will safeguard the other activities within the Los Angeles-Long Beach Harbor Naval Defensive Sea Area essential to the national defense.

These regulations are subject to amplification by the local United States naval authority as necessary to meet local circumstances and conditions.

When a United States Maritime Control Area is established adjacent to or abutting upon the Los Angeles-Long Beach Harbor Naval Defensive Sea Area, it shall be assumed that permission to enter, and other instructions issued by proper author-

ity, shall apply to any one continuous passage through or within both areas.

Any master of a vessel or other person within the Los Angeles-Long Beach Harbor Naval Defensive Sea Area who shall disregard these regulations, or shall fail to obey an order of United States naval authority to stop or heave-to, or shall perform any act threatening the efficiency of mines or other defenses or the safety of navigation, or shall take any action inimical to the interest of the United States, may be detained therein by force of arms and renders himself liable to attack by the armed forces of the United States, and liable to prosecution as provided for in section 44 of the Criminal Code, as amended (U. S. C., title 18, sec. 96).

(6) *Kiska Island Naval Defensive Sea Area; Unalaska Island Naval Defensive Sea Area* [2]

(Executive Order No. 8680, 14 February 1941, 6 F. R. 1014, corrected by No. 8729, 2 April 1941, 6 F. R. 1791; still in force.)

[Area:] The territorial waters between the extreme high-water marks and the three-mile marine boundaries surrounding the islands of Kiska and Unalaska.

[Regulations:] At no time shall any person, other than persons on public vessels of the United States, enter either of the naval defensive sea areas herein set apart and reserved, nor shall any vessel or other craft, other than public vessels of the United States, be navigated into either of said areas, unless authorized by the Secretary of the Navy.

[2] A naval airspace reservation was established at the same time in the airspace over the same areas.

(7) *Kaneohe Bay Naval Defensive Sea Area* [3]

(Executive Order No. 8681, 14 February 1941, 6 F. R. 1014; still in force.)

[Area:] The territorial waters within Kaneohe Bay between extreme high-water mark and the sea and in and about the entrance channel within a line bearing northeast true extending three nautical miles from Kaoio Point, a line bearing northeast true extending four nautical miles from Kapoho Point, and a line joining the seaward extremities of the two above-described bearing lines.

[Regulations identical with No. 6 above.]

[3] A naval airspace reservation was established at the same time in the airspace over the same area.

(8) *Palmyra Island Naval Defensive Sea Area; Johnston Island*

Naval Defensive Sea Area; Midway Island Naval Defensive Sea Area; Wake Island Naval Defensive Sea Area; Kingman Reef Naval Defensive Sea Area [4]

(Executive Order No. 8682, 14 February 1941, 6 F. R. 1014, corrected by No. 8729, 2 April 1941, 6 F. R. 1791; still in force.)

[Area:] The territorial waters between the extreme high-water marks and the three-mile marine boundaries surrounding the islands of Palmyra, Johnston, Midway, Wake, and Kingman Reef, in the Pacific Ocean.

[Regulations identical with No. 6 above.]

(9) *Rose Island Naval Defensive Sea Area; Tutuila Island Naval Defensive Sea Area; Guam Island Naval Defensive Sea Area* [4]

(Executive Order No. 8683, 14 February 1941, 6 F. R. 1015, corrected by No. 8729, 2 April 1941, 6 F. R. 1791; still in force.)

[Areas:] The territorial waters between the extreme high-water marks and the three-mile marine boundaries surrounding the islands of Rose, Tutuila, and Guam, in the Pacific Ocean.

[Regulations identical with No. 6 above.]

[4] A naval airspace reservation was established at the same time in the airspace over the same areas.

(10) *Culebra Island Naval Defensive Sea Area* [5]

[Executive Order No. 8684, 14 February 1941, 6 F. R. 1016; still in force.]

[Area:] The territorial waters between the extreme high-water mark and the three-mile marine boundary surrounding the island of Culebra, Puerto Rico.

[Regulations identical with No. 6 above.]

(11) *Kodiak Island Naval Defensive Sea Area* [5]

[Executive Order No. 8717, 22 March 1941, 6 F. R. 1621; still in force.]

[Area:] The territorial waters between extreme high-water mark and the three-mile marine boundary adjacent to the eastern portion of Kodiak Island, Alaska, in and about Women's Bay to the westward within a line bearing true north and south tangent to the eastern extremity of High Island.

[Regulations identical with No. 6 above.]

(12) *Subic Bay Naval Defensive Sea Area* [5]

[Executive Order No. 8718, 22 March 1941, 6 F. R. 1621; discontinued by No. 9720, 8 May 1946, 11 F. R. 5105.]

[Area:] The territorial waters within Subic Bay, Philippine Islands, between extreme high-water mark and the sea and in

and about the entrance channel within a line bearing true southwest extending three nautical miles from Panibatujan Point, a line bearing true southwest extending three nautical miles from Sanpaloc Point, and a line joining the seaward extremities ofthe above two bearing lines.

[Regulations identical with No. 6 above.]

[5] A naval airspace reservation was established at the same time in the airspace over the same area.

(13) *Guantanamo Bay Naval Defensive Sea Area* [6]

[Executive Order No. 8749, 1 May 1941, 6 F. R. 2252; still in force.]

[Area:] The territorial waters within Guantanamo Bay, Cuba, between high-water mark and the sea and in and about the entrance channel within a line bearing true south extending three nautical miles from the shore line of the eastern boundary of Guantanamo Naval Reservation, as laid down in the Agreement between the United States of America and the Republic of Cuba signed by the President of Cuba on February 16, 1903, and by the President of the United States on February 23, 1903, a line bearing true south extending three nautical miles from the shore line of the western boundary of said Naval Reservation, and a line joining the seaward extremities of the above two bearing lines.

[Regulations:] At no time shall any vessel or other craft, other than public vessels of the United States and vessels engaged in Cuban trade, be navigated into Guantanamo Bay Naval Defensive Sea Area, unless authorized by the Secretary of the Navy.

At no time shall any aircraft, other than public aircraft of the United States, be navigated into Guantanamo Bay Naval Airspace Reservation, unless authorized by the Secretary of the Navy.

[6] A naval airspace reservation was established at the same time in the airspace over the same area.

(14) *Manila Bay Naval Defensive Sea Area*

[Executive Order No. 8853, 16 August 1941, 6 F. R. 4180; discontinued by No. 9720, 8 May 1946, 11 F. R. 5105.]

[Area:] All territorial waters of Manila Bay, Philippine Islands, and its approaches and tributaries from the contour line of extreme high water as shown on the latest U. S. C. and G. S. charts, to:

A line running southwest true from Luzon Point, in approximate position, Latitude 14°27′40″ North, Longitude 120°23′13″ East to the seaward limit of territorial waters, thence southeasterly along the seaward limit of territorial waters to the parallel of Latitude 14°10′15″ North, thence east along that parallel of Latitude to meet the short at Hamilo Point in approximate Latitude 14°10′15″ North, Longitude 120°34′24″ East.

[Regulations identical with No. 5 above, except that the paragraph beginning "The loading or unloading by vessels of oil fuel" is omitted.]

(15) *Portland, Maine, Defensive Sea Area; Portsmouth, New Hampshire, Defensive Sea Area; Narragansett Bay Defensive Sea Area; San Diego, California, Defensive Sea Area; San Francisco, California, Defensive Sea Area; Columbia River Entrance Defensive Sea Area; Strait of Juan de Fuca and Puget Sound Defensive Sea Area*

[Executive Order No. 8970, 11 December, 1941, 6 F. R. 6417, amended as to Narragansett Bay by No. 9342, 19 May 1943, 8 F. R. 6647; discontinued as to Portland, Maine, Portsmouth, New Hampshire, and Narragansett Bay by No. 9650, 29 October 1945, 10 F. R. 13431, and as to San Diego, San Francisco, Coumbia River Entrance, and Strait of Juan de Fuca and Puget Sound by No. 9720, 8 May 1946, 11 F. R. 5105.]

[The text is reproduced in Naval War College, International Law Documents, 1943, p. 83.]

(16) *New York Harbor Defensive Sea Area; New London Defensive Sea Area; Delaware Bay and River Defensive Sea Area; Chesapeake Bay-Norfolk Defensive Sea Area; Charleston Harbor Defensive Sea Area*

[Executive Order No. 8978, 16 December 1941, 6 F. R. 6469; discontinued by No. 9650, 29 October 1945, 10 F. R. 13431.]

[Areas:]

New York Harbor Defensive Sea Area

All United States territorial waters of New York Harbor and its approaches and tributaries from the contour line of extreme high water on the shores of these waters as shown on the latest U. S. C. & G. S. Charts, to:

A line from Rockaway Point Coast Guard Station, Rockaway Point, New York, to Ambrose Channel Lightship, thence to Navesink Lighthouse, Highlands, New Jersey.

A line across the Raritan River at and following the Central Railroad of New Jersey Bridge from South Amboy to Perth Amboy, New Jersey.

The contour line of extreme high water following the western shore of Arthur Kill and Newark Bay.

A line across the Passaic River at and following the Erie Railroad Bridge, Arlington, New Jersey.

A line across the Hackensack River at and following the Delaware, Lackawanna and Western Railroad Bridge near Anderson Creek, New Jersey.

A line across the Hudson River at and following the Bear Mountain Bridge.

A line across Long Island Sound from Sands Point Lighthouse, Long Island, to Execution Rocks Lighthouse, thence to Larchmont, New York.

New London Defensive Sea Area

All United States territorial waters of Long Island Sound Block Island Sound, Thames River, Gardiners Bay, and their tributaries from the contour line of extreme high water on the shores of these waters as shown on the latest U. S. C. & G. S. Charts, to:

A line from Montauk Point Lighthouse, Long Island to Block Island Southeast Lighthouse, thence to Point Judith Lighthouse Rhode Island.

A line across the Thames River from shore to shore at and following the parallel of Latitude 41°26′ North.

A line running from Black Point (Niantic Bay), Connecticut, to Orient Point, Long Island, thence to Long Beach Bar Lighthouse and thence to Cedar Point, Long Island.

Delaware Bay and River Defensive Sea Area

All United States territorial waters of Delaware Bay and its seaward approaches, Delaware River, and Schuylkill River, from the contour line of extreme high water on the shores of these waters as shown on the latest U. S. C. & G. S. Charts, to:

A line running from Cape May East Jetty Light, Cape May, New Jersey, on bearing 147° true to the seaward limit of U. S. territorial waters, thence along the seaward boundary of territorial waters southwesterly to the parallel of Latitude 38°43′ 18″ North, and thence west along this parallel of Latitude to the Tower, at Rehoboth, Delaware, in approximate position, Latitude 38°43′18″, Longitude 75°04′38″ West.

A line across the Delaware River above Philadelphia, Pennsylvania, at and following the Pennsylvania Railroad Bridge at Fisher Point, New Jersey.

A line across the Schuylkill River at and following Fairmount Dam.

Chesapeake Bay-Norfolk Defensive Sea Area

All United States territorial waters of Chesapeake Bay and its approaches; Hampton Roads, Elizabeth River, James River, York River, and their tributaries from the contour line of extreme high water on the shores of these waters as shown on the latest U. S. C. & G. S. Charts, to:

A line running from the southernmost point of Cape Charles, Virginia, to Cape Charles Lighthouse on Smith Island, thence on a bearing 130° true to the seaward limit of U.S. territorial waters, thence southwesterly along the limit of territorial waters to the parallel of Latitude 36°51′15″ and thence west meeting the shore at the U.S. Coast Guard Station, Virginia Beach, Va.

A line across the Southern Branch, Elizabeth River, from shore to shore along the parallel of Latitude 36°46′ North.

A line across the James River at and following the James River Bridge, near Newport News, Virginia.

A line across the York River, from shore to shore along the parallel of Latitude 37°20′ North.

A line running from New Point Comfort (Mobjack Bay), Virginia, along the parallel of Latitude 37°18′ North to the eastern shore of Chesapeake Bay at Westcott Point.

Charleston Harbor Defensive Sea Area

All United States territorial waters of Charleston Harbor and its seaward approaches; Cooper River, Ashley River, Wando River, and their tributaries from the contour line of extreme high water on the shores of these waters as shown on the latest U. S. C. & G. S. Charts, to:

A line running from the Standpipe on Isle of Palms, South Carolina, on a bearing 180° to the seaward limit of U. S. territorial waters, thence along the seaward limit of territorial waters to the Latitude of Charleston Lighthouse (32°41′42″ North), thence west along that parallel of Latitude to Charleston Lighthouse, thence on a line bearing 308° true to the tank in Edgewater Park in Latitude 32°46′06″ North, Longitude 80°00′03″ West.

A line across the Ashley River, from shore to shore at and following the meridian of 80° West Longitude.

A line across the Cooper River, from shore to shore at and following the parallel of Latitude 32°55′ North.

A line across the Wando River, from shore to shore at and

following the meridian of Longitude 79°52′43″ West, to a point at Latitude 32°51′48″, thence along bearing 136° true to the Standpipe on Isle of Palms.

[Regulations identical with those in No. 14 above were made applicable by this executive order to all defensive sea areas. It was provided in addition that "Permission to enter or transit the Panama Canal shall, however, continue to be a separate procedure."]

(17) *Honolulu Defensive Sea Area*

[Executive Order No. 8987, 20 December 1941, 6 F. R. 6675; still in force.]

[Area:] All United States territorial waters of Honolulu Harbor, Oahu, Territory of Hawaii, its approaches and tributaries from the contour line of extreme high water as shown on the latest U. S. C. and G. S. charts to:

A line running south true from the shore at Koko Head, Oahu, along the meridian of Longitude 157°42′ West, to the seaward limit of United States territorial waters;

A line running south true from Ahua Point Lighthouse to the seaward limit of United States territorial waters; and

A line running along the seaward limit of United States tertorial waters between the above-described bearing lines.

[Regulations identical with No. 9 above, except for the addition of the sentence: "This order shall not be construed as modifying in any way the proclamation of the Governor of the Territory of Hawaii placing the territory of Hawaii under martial law."]

(18) *Matagorda Bay Defensive Sea Area*

[Executive Order No. 9168, 20 May 1942, 7 F. R. 3841; discontinued by No. 9648, 25 October 1945, 10 F. R. 13351.]

[Area:] All territorial waters of Matagorda Bay, Texas, including Trepalacios Bay but not restricted thereto, together with all approaches thereto and tributaries thereof from the contour line of extreme high water as shown on the U. S. C. and G. S. chart No. 1284.

[Regulations:] At no time shall vessels or other craft be navigated within such area unless specific permission therefor is first obtained, in the manner prescribed by him, from the Secretary of War or from the officer designated by him. Although such permission has been obtained, a vessel entering or navigating the waters of the Matagorda Bay Defensive Sea Area does so at its own risk, and shall obey all instructions received from the United States Army or other United States authority.

The movements of vessels within the Matagorda Bay

Defensive Sea Area shall be subject to supervision, either through surface craft or aircraft.

(19) *Buzzards Bay and Vineyard Sound Defensive Sea Area*

[Executive Order No. 9266, 6 November 1942, 7 F. R. 9107; discontinued by No. 9650, 29 October 1947, 10 F. R. 13431.]

[Area:] All United States territorial waters of Buzzards Bay and Vineyard Sound and their seaward approaches and tributaries from the contour line of extreme high water on the shores of these waters as shown on the latest U. S. C. & G. S. Charts to:

A line running from the southernmost tip of Sakonnet Point;

thence to Bell Buoy 2 off Schuyler Ledge in approximate position Latitude 41°26′24″ North, Longitude 71°11′39″ West;

thence on a side line due south to approximate position Latitude 41°18′03″ North, Longitude 71°11′39″ West;

thence due east to the southernmost tip of Squibnocket Point on Martha's Vineyard;

thence along the western and northern shore line of Martha's Vineyard to West Chop Light;

thence due north to the mainland in approximate Latitude 41°32′36″ North, Longitude 70°36′00″ West.

[Regulations identical with No. 9 above.]

(20) *Regulations Applicable to All Defensive Sea Areas*

[Executive Order No. 9275, 23 November 1942, 7 F. R. 9697; still in force.]

1. No person shall have his possession within the limits of any defensive sea area, any camera or other device for taking pictures, or any film, plate or other device upon or out of which a photographic imprint, negative or positive, can be made, except in the performance of official duty or employment in connection with the national defense, or when authorized pursuant to the provisions of the act approved June 25, 1942 [56 Stat. 390], and the regulations promulgated thereunder.

2. It shall be the duty of the master or officer in charge of any vessel to take custody of and safeguard all cameras or other devices for taking pictures, or film, plate or other device upon or out of which a photographic imprint, positive or negative, can be made, the possession of which is prohibited by this order, from any person, prior to the time any vessel enters any defensive sea area or upon the boarding by any person of any vessel while within a defensive sea area, and to retain custody thereof until such vessel is outside the defensive sea area or the person is about to disembark.

3. There shall be prominently displayed on board all vessels,

except public war vessels of the United States manned by personnel in the naval service, a printed notice containing the regulations herein prescribed.

4. Any person violating section 1 hereof shall be liable to posecution as provided in section 44 of the Criminal Code, as amended.

c. Maritime Control Areas

Note. By six proclamations issued in 1941 and 1942, the President established seventeen Maritime Control Areas, some of which included areas of the high seas outside the limit of territorial waters. The President issued these proclamations in exercise of the authority vested in him as President, and as Commander in Chief of the Army and Navy of the United States, and "in accordance with the principle of self-defense of the Law of Nations;" the proclamation establishing the Cristobal and Gulf of Panama Maritime Control Areas also referred to a request by the Government of Panama for "the cooperation of the Government of the United States in exercising control in Panamanian waters adjacent to the Panama Canal, in accordance with the joint obligation of the two countries under their General Treaty of March 2, 1936, and otherwise, to insure the effective protection of the said Canal."[7]

The proclamation establishing the Hawaiian Maritime Control Area, reproduced here, served as a model for the others, but the phrase in paragraph five, "the law applicable to violations committed on the high seas being international law", was not repeated in other proclamations. Only the descriptions of other areas are reproduced.

All of the Maritime Control Areas were discontinued in 1945 or 1946.

(1) *Hawaiian Maritime Control Area*

[Proclamation No. 2532, 27 December 1941, 55 Stat. 1713, discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.]

Whereas the United States is now at war, and the

[7] Article 10 of the General Treaty of 2 March 1936 (U. S. Treaty Series, No. 945) provides:

"In case of an international conflagration or the existence of any threat of aggression which would endanger the security of the Republic of Panama or the neutrality or security of the Panama Canal, the Governments of the United States of America and the Republic of Panama will take such measures of prevention and defense as they may consider necessary for the protection of their common interests. Any measures, in safeguarding such interests, which it shall appear essential to one Government to take, and which may affect the territory under the jurisdiction of the other Government, will be the subject of consultation between the two Governments."

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establishment of the maritime control area hereinafter described is necessary in the interests of national defense:

Now, therefore, I, FRANKLIN D. ROOSEVELT, President of the United States of America, by virtue of the authority vested in me as President of the United States, and as Commander-in-Chief of the Army and Navy of the United States, and in accordance with the principle of self-defense of the Law of Nations, do hereby proclaim and establish the following-described area as the Hawaiian Maritime Control Area, and prescribe the following regulations for the control thereof:

Hawaiian Maritime Control Area

All waters contained within the area delimited by lines connecting successively the following points.

Latitude 22°30′ N.	Longitude 158° W.
Latitude 21° N.	Longitude 155°30′ W.
Latitude 20°30′ N.	Longitude 155°30′ W.
Latitude 20° N.	Longitude 156°30′ W.
Latitude 21° N.	Longitude 159° W.
Latitude 22° N.	Longitude 159° W.
Latitude 22°30′ N.	Longitude 158° W.

Regulations for the Control of Hawaiian Maritime Control Area

1. A vessel not proceeding under United States naval or other United States authorized supervision shall not enter or navigate the waters of the Hawaiian Maritime Control Area except during daylight, when good visibility conditions prevail, and then only after specific permission has been obtained. Advance arrangements for entry into or navigation through or within the said Area must be made, preferably by application at a United States Naval District Headquarters in advance of sailing, or by radio or visual communication on approaching the seaward limits of the area. If radio telegraphy is used, the call "NQO" shall be made on a frequency of 500 kcs, and permission to enter the port requested. The name of the vessel, purpose of entry, and name of master must be given in the request. If visual communications are used, the procedure shall be essentially the same.

2. Even though permission has been obtained, it is incumbent upon a vessel entering the said Area to obey any further instructions received from the United States Navy, or other United States authority.

3. A vessel may expect supervision of its movements within

the said Area, either through surface craft or aircraft. Such controlling surface craft and aircraft shall be identified by a prominent display of the Union Jack.

4. These regulations may be supplemented by regulations of the local United States naval authority as necessary to meet local circumstances and conditions.

5. Should any vessel or person within the said Area disregard these regulations, or regulations issued pursuant hereto, or fail to obey an order of the United States naval authority, or perform any act threatening the efficiency of mine or other defenses, or take any action therein inimical to the defense of the United States, such vessel or person may be subjected to the force necessary to require compliance, and may be liable to detention or arrest, or penalties or forfeiture, in accordance with law, the law applicable to violations committed on the high seas being international law.

The Secretary of the Navy is charged with the enforcement of these regulations.

(2) *Cristobal Maritime Control Area*

[Proclamation No. 2536, 16 January 1942, 56 Stat. 1932; discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.]

[Area:] All waters contained within the seaward limit of an arc described with the western breakwater entrance light at Cristobal, Canal Zone, as a center, a radius of 36 sea miles, and meeting the shore line in the east in the vicinity of position Latitude 90°35′ North, Longitude 79°21′ West, and in the west in the vicinity of position Latitude 09°08′ North, Longitude 80°29′ West.

(3) *Gulf of Panama Maritime Control Area*

[Proclamation No. 2536, 16 January 1942, 56 Stat. 1932; discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.]

[Area:] All waters of the Gulf of Panama to the north of Latitude 8° North.

(4) *Boston Maritime Control Area*

(Proclamation No. 2540, 10 February 1942, 56 Stat. 1936; discontinued by Proclamation No. 2663, 11 September 1945, 59 Stat. 881.)

[Area:] All waters within the area enclosed by lines running as follows:

Beginning at the intersection of the western shore of Sandy Bay, Cape Ann, Massachusetts, and the parallel of Latitude 42°40′ North, in approximate Longitude 70°37′23″ West;

thence along that parallel to Longitude 70°12′30″ West;

thence along approximate true bearing 152° to position Latitude 42°00′ North, Longitude 69°44′ West; and

thence west true to the eastern shore of Cape Cod, Massachusetts, in approximate Longitude 72°01′10″ West.

(5) *San Francisco Maritime Control Area*

(Proclamation No. 2543, 25 March 1942, 56 Stat. 1941; discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.)

[Area:] All waters within the area enclosed by lines running as follows:

Beginning at Point Reyes Lighthouse, California, in approximate position Latitude 37°59′45″ North, Longitude 123°01′20″ West;

thence along approximate true bearing 225° to position Latitude 37°49′08″ North, Longitude 123°14′32″ West;

thence along approximate true bearing 145°30′ to position Latitude 37°20′ North, Longitude 122°49′22″ West; and

thence east true to the shore in approximate Longitude 122° 24′08″ West.

(6) *Columbia River Maritime Control Area*

(Proclamation No. 2543, 25 March 1942, 56 Stat. 1941; discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.)

[Area:] All waters contained within the seaward limit of an arc described with North Head Light, Washington, as a centre, a radius of fifty nautical miles, and meeting the shore line in the south in the vicinity of position Latitude 45°28′15″ North, Longitude 123°58′15″ West, and in the north in the vicinity of position Latitude 47°08′50″ North, Longitude 124°10′50″ West.

(7) *Puget Sound Maritime Control Area*

(Proclamation No. 2543, 25 March 1942, 56 Stat. 1941; discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.)

[Area:] All waters, excluding Canadian territorial waters, contained within the seaward limit of an arc described with Cape Flattery Light, Washington, as a centre, a radius of fifty nautical miles, and meeting the shore line in the south in the vicinity of position Latitude 47°35′ North, Longitude 124°22′ West, and meeting the seaward limit of Canadian territorial waters in the north in the vicinity of position Latitude 48°56′ 30″ North, Longitude 125°40′30″ West.

(8) *Southeastern Alaska Maritime Control Area*

(Proclamation No. 2543, 25 March 1942, 56 Stat. 1941; discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.)

[Area:] All waters within the area enclosed by lines running as follows:

Beginning at a point on the international boundary line between the Territory of Alaska, and Canada at the southwesterly entrance of the Portland Canal, in approximate position Latitude 54°44′ North, Longitude 130°43′ West;

thence along said boundary line and the seaward extension thereof an approximate true bearing 265°30′ to position Latitude 54°35′ North, Longitude 134°29′ West;

thence along approximate true bearing 326°24′ to position Latitude 58°33′ North, Longitude 139°14′30″ West; and

thence along approximate true bearing 85°30′ to the north cape of Lituya Bay, Alaska, in approximate position Latitude 58°36′40″ North, Longitude 137°40′20″ West.

(9) *Prince William Sound Maritime Control Area*

(Proclamation No. 2543, 25 March 1942, 56 Stat. 1941; discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.)

[Area:] All waters within the area enclosed by lines running as follows:

Beginning at Pinnacle Rock Lighthouse on the southwesterly end of Cape St. Elias, Alaska, in approximate position Latitude 59°48′ North, Longitude 144°36′ West;

thence approximately south to position Latitude 59°00′ North, Longitude 144°36′ West;

thence approximately west true to position Latitude 59°00′ North, Longitude 150°26′ West; and

thence approximately north true to the southwesterly end of Outer Island of the Pye Islands group in approximate position Latitude 59°20′35″ North, Longitude 150°26′ West.

(10) *Kodiak Maritime Control Area*

(Proclamation No. 2543, 25 March 1942, 56 Stat. 1941; discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.)

[Area:] All waters contained within the seaward limit of a circle described with Kodiak, Alaska, as a center, a radius of fifty nautical miles, and meeting the shore line in the north at Point Banks, in the vicinity of position Latitude 58°36′ North, Longitude 152°22′ West; in the south in the vicinity of position Latitude 57°05′ North, Longitude 153°13′ West; in the west in the vicinity of position Latitude 57°31′ North, Longitude 153°52′ West; and in the north in the vicinity of position Latitude 58°36′ North, Longitude 152°36′ West.

(11) *Unalaska Maritime Control Area*

(Proclamation No. 2543, 25 March 1942, 56 Stat. 1941; discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.)

[Area:] All waters contained within the seaward limit of two arcs described as follows:

The first arc described with Unalaska, Alaska, as a center, a radius of fifty nautical miles, and meeting the shore line in the vicinity of positions Latitude 53°17′30″ North, Longitude 167°35′ West; Latitude 54°23′ North, Longitude 167°43′ West; Latitude 53°29′ North, Longitude 167°49′ West; Latitude 53°31′30″ North, Longitude 167°51′ West; and intersecting the second arc in the vicinity of positions Latitude 54°40′ North, Longitude 166°05′ West and Latitude 53°35′ North, Longitude 165°10′ West.

The second arc described with Scotch Cap Lighthouse on the southwesterly end of Chumiak Island, Alaska, as a center, a radius of fifty nautical miles, and meeting the shore line in the vicinity of positions Latitude 54°41′15″ North, Longitude 163°24′15″ West and Latitude 55°02′10″ North, Longitude 163°48′30″ West, and intersecting the first arc in the positions stated in the preceding paragraph.

(12) *Casco Bay Maritime Control Area*

(Proclamation No. 2569, 21 October 1942, 56 Stat. 1978; discontinued by Proclamation No. 2663, 11 September 1945, 59 Stat. 881.)

[Area:] All waters within the area enclosed by lines running as follows:

Beginning at a point on Small Point, Cape Small in approximate position Latitude 43°42′06″ North, Longitude 69°50′03″ West;

thence due south through Fuller Rock Light to an approximate position Latitude 43°32′19″ North, Longitude 69°50′03″ West; and

thence due west to a point on Adam Head, Richmond Island, in approximate position Latitude 43°32′19″ North, Longitude 70°13′48″ West.

(*13*) *Portsmouth, New Hampshire, Maritime Control Area*

(Proclamation No. 2569, 21 October 1942, 56 Stat. 1978; discontinued by Proclamation No. 2663, 11 September 1945, 59 Stat. 881.)

[Area:] All waters within the area enclosed by lines running as follows:

Beginning at Cape Neddick Light in approximate position Latitude 43°09′54″ North, Longitude 70°35′30″ West;

thence southeasterly to Boon Island Light in approximate position Latitude 43°07′16″ North, Longitude 70°28′36″ West;

thence due south to approximate position Latitude 42°55′05″ North, Longitude 70°28′36″ West; and

thence due west to a point on Great Boars Head in approximate position Latitude 42°55′05″ North, Longitude 70°47′42″ West.

(14) *Cape Hatteras Maritime Control Area*

(Proclamation No. 2569, 21 October 1942, 56 Stat. 1978; discontinued by Proclamation No. 2663, 11 September 1945, 59 Stat. 881.)

[Area:] All waters within the area enclosed by lines running as follows:

Beginning at a point on the beach near Swash Inlet in approximate position Latitude 34°58′02″ North, Longitude 76°10′ West;

thence southeasterly to position Latitude 34°53′ North, Longitude 75°58′ West;

thence due east to position Latitude 34°53′ North, Longitude 75°31′ West;

thence northeasterly to position Latitude 35°05′ North, Longitude 75°22′ West;

thence due north to position Latitude 35°08′ North, Longitude 75°22′ West;

thence northwesterly to position Latitude 35°17′ North, Longitude 75°28′ West; and

thence due west to the beach in approximate position Latitude 35°17′ North, Longitude 75°30′43″ West.

(15) *Key West Maritime Control Area*

(Proclamation No. 2569, 21 October 1942, 56 Stat. 1978; discontinued by Proclamation No. 2663, 11 September 1945, 59 Stat. 881.)

[Area:] All waters within the area enclosed by the following parallels of latitude and meridians of longitude:

Between the parallels of Latitude 24°36′ North and Latitude 25°10′ North; and

between the meridians of Longitude 81°23′ West and Longitude 82°10′ West.

(16) *Los Angeles Maritime Control Area*

(Proclamation No. 2569, 21 October 1942, 56 Stat. 1978; discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.)

[Area:] That sea area lying within the following boundaries:

From Point Dume, California, to the Northwesterly point of Santa Catalina Island;

thence along the Northern shore of Santa Catalina Island to the Southeasterly point of that island;

from the Southeasterly point of Santa Catalina Island to Dana Point, California.

(17) *San Diego Maritime Control Area*

(Proclamation No. 2573, 17 November 1942, 56 Stat. 1985; discontinued by Proclamation No. 2691, 8 May 1946, 60 Stat. 1347.)

[Area:] That sea area lying within the following boundaries:

From Point La Jolla, California, on a line approximately 249° true to a point Latitude 32°45′ North, Longitude 117 35′ West;

thence along a line approximately 160° true to a point Latitude 32°32′ North, Longitude 117°29′20″ West;

thence Easterly to the United States-Mexico border.

D. Customs Enforcement Areas

Note: Section 1a of the Anti-Smuggling Act of 5 August 1935 (49 Stat. 517) provides:

"Whenever the President finds and declares that at any place or within any area on the high seas adjacent to but outside customs waters any vessel or vessels hover or are being kept off the coast of the United States and that, by virtue of the presence of any such vessel or vessels at such place or within such area, the unlawful introduction or removal into or from the United States of any merchandise or person is being or may be occasioned, promoted, or threatened, the place or area so found and declared shall constitute a customs-enforcement area for the pruposes of this Act. Only such waters on the high seas shall be within a customs-enforcement area as the President finds and declares are in such proximity to such vessel or vessels that such unlawful introduction or removal of merchandise or persons may be carried on by or to or from such vessel or vessels. No customs-enforcement area shall include any waters more than one hundred nautical miles from the place or immediate area where the President declares such vessel or vessels are hovering or are being kept and, notwithstanding the foregoing provision, shall not include any waters more than fifty nautical miles outwards from the outer limit of customs waters. Whenever the President finds that, within any customs-enforcement area, the circumstances no longer exist which gave rise to the declaration of such area as a customs-enforcement area, he shall so delcare, and thereafter, and until a further finding and declaration is made under this subsection with respect to waters within such area, no waters within such area shall constitute a part of such customs-enforcement area. The provisions of law applying to the high seas adjacent to customs waters of the United States shall be enforced in a customs enforcement area upon any vessel, merchandise, or person found therein."

Section 401 of the Tariff Act of 1930, as amended in 1935 (49 Stat. 521), defines "customs waters" as follows:

"The term 'customs waters' means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States."

In 1935 the President issued five proclamations establishing customs-enforcement areas; all of them were discontinued by an order of 3 September 1946 (11 F. R. 9857). The text of the first proclamation, which served as a model for the others, is reproduced in full; only the descriptions of other areas are given.

(1) *Customs Enforcement Area No. 1*

[Proclamation No. 2131, 7 August 1935, 49 Stat. 3462; discontinued by order, 3 September 1946, 11 F. R. 9857.]

Whereas section 1 (a) of the Anti-Smuggling Act, approved August 5, 1935 (Public No. 238, 74th Congress), provides, among other things, that whenever the President finds and declares that at any place or within any area on the high seas adjacent to but outside customs waters any vessel or vessels hover or are being kept off the coast of the United States, and that, by virtue of the presence of any such vessel or vessels at such place or within such area, the unlawful introduction or removal into or from the United States of any merchandise or person is being or may be occasioned, promoted, or threatened, the place or area so found and declared shall constitute a customs-enforcement area for the purposes of this Act:

Now, therefore, I, Franklin Delano Roosevelt, President of the United States of America, do hereby find and declare:

1. That vessels hover or are being kept off the coast of the United States on the high seas adjacent to but outside customs waters within the area described as follows:

That area of waters of the North Atlantic Ocean bounded by:

(*a*) The arc of a circle described with a radius of one hundred nautical miles from a center at Latitude forty degrees thirty-seven minutes North (40°–37′ N) Longitude sixty-nine degrees twenty-three minutes West (69°–23′ W).

(*b*) That part of an irregular curve, included within the arc of the circle described in (*a*), which is the locus of points twelve nautical miles offshore from low water mark of the coast of the United States.

(*c*) That part of an irregular curve, included within the arc of the circle described in (*a*), which is the locus of points sixty-two

nautical miles offshore from low water mark of the coast of the United States.

2. That the place or immediate area within the area described in paragraph 1 where such vessels are hovering or are being kept is:

That place or immediate area on the North Atlantic Ocean at Latitude forty degrees thirty-seven minutes North (40°–37′ N) Longitude sixty-nine degrees twenty-three minutes West (69°–23′ W).

3. That the area described in paragraph 1 does not include any waters more than 100 nautical miles from the place or immediate area where such vessels are and are hereby declared to be hovering or kept, and does not include any waters more than 50 nautical miles outwards from the outer limit of customs waters.

4. That, by virtue of the presence of such vessels within the area described in paragraph 1, the unlawful introduction or removal into or from the United States of merchandise or persons is being or may be occasioned, promoted, or threatened.

5. That all the waters within the area described in paragraph 1 are in such proximity to such vessels that such unlawful introduction or removal of merchandise or persons may be carried on by or to or from such vessels.

And I do hereby proclaim that under the terms of the said Anti-Smuggling Act, the area described in paragraph 1 constitutes a customs-enforcement area, to be designated as Customs Enforcement Area No. 1, and the provisions of law applying to the high seas adjacent to customs waters of the United States shall be enforced in such area upon any vessel, merchandise, or person found therein.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 7″ day of August in the year of our Lord, one thousand nine hundred and thirty-five, and of the Independence of the United States of America the one hundred and sixtieth.

[SEAL]

FRANKLIN D. ROOSEVELT.

By the President:

CORDELL HULL

Secretary of State.

(2) *Customs Enforcement Area No. 2*

(Proclamation No. 2132, 27 August 1935, 49 Stat. 3464; discontinued by order; 3 September 1946, 11 F. R. 9857.)

[Area:] That area of waters of the North Atlantic Ocean bounded by:

(*a*) The arc of a circle described with a radius of one hundred nautical miles from a center at Latitude forty degrees twenty minutes North (40°–20′ N) Longitude seventy-two degrees twenty-eight minutes West (72°–28′ W).

(*b*) That part of an iregular curve, included within the arc of the circle described in (*a*), which is the locus of outermost points twelve nautical miles offshore from low water mark of the coast of the United States.

(*c*) That part of an irregular curve, included within the arc of the circle described in (*a*), which is the locus of outermost points sixty-two nautical miles offshore from low water mark of the coast of the United States.

(3) *Customs Enforcement Area No. 3*

(Proclamation No. 2149, 7 December 1935, 49 Stat. 3484; discontinued by order; 3 September 1946, 11 F. R. 9857.)

[Area:] That area of waters of the Gulf of Mexico bounded by:

(*a*) The arc of a circle described with a radius of one hundred nautical miles from a center at Latitude twenty-eight degrees forty-seven minutes North (28°–47′ N) Longitude ninety-one degrees forty-five minutes West (91°–45′ W).

(*b*) That part of an irregular curve, included within the arc of the circle described in (*a*), which is the locus of outermost points twelve nautical miles offshore from low water mark of the coast of the United States.

(*c*) That part of an irregular curve, included within the arc of the circle described in (*a*), which is the locus of outermost points sixty-two nautical miles offshore from low water mark of the coast of the United States.

(4) *Customs Enforcement Area No. 4*

(Proclamation No. 2150, 7 December 1935, 49 Stat. 3485; discontinued by order; 3 September 1946, 11 F. R. 9857.)

[Area:] That area of waters of the Gulf of Mexico bounded by:

(*a*) The arc of a circle described with a radius of one hundred nautical miles from a center at Latitude twenty-eight degrees thirty-one minutes North (28°–31′ N) Longitude eighty-nine degrees fifty-three minutes West (89°–53′) W).

(*b*) That part of an irregular curve, included within the arc of the circle described in (*a*), which is the locus of outermost points twelve nautical miles offshore from low water mark of the coast of the United States.

(*c*) That part of an irregular curve, included within the arc of the circle described in (*a*), which is the locus of outermost points sixty-two nautical miles offshore from low water mark of the coast of the United States.

(5) *Customs Enforcement Area No. 5*

(Proclamation No. 2152, 27 December 1935, 49 Stat. 3488; discontinued by order, 3 September 1946, F. R. 9857.)

[Area:] That area of waters of the North Atlantic Ocean bounded by:

(*a*) The arc of a circle described with a radius of one hundred nautical miles from a center at Latitude forty-three degrees eight minutes North (43°–08′ N) Longitude sixty-nine degrees seventeen minutes West (69°–17′ W).

(*b*) That part of an irregular curve, included within the arc of the circle described in (*a*), which is the locus of outer most points twelve nautical miles offshore from low water mark of the coast of the United States.

(*c*) That part of an irregular curve, included within the arc of the circle described in (*a*), which is the locus of outer most points sixty-two nautical miles offshore from low water mark of the coast of the United States.

E. Laws Concerning the Pollution of Navigable Waters

Note. A Preliminary Conference on Oil Pollution of Navigable Waters was held in Washington in 1926 by representatives of the United States, Belgium, the British Empire, Denmark, France, Germany, Italy, Japan, the Netherlands, Norway, Spain and Sweden. The Conference prepared a draft convention which provided that the Governments might establish areas in waters within fifty nautical miles of their coasts, or under special conditions within 150 nautical miles, within which the discharge of oil from sea-going vessels other than war vessels should be prohibited. United States Foreign Relations, 1926, I, pp. 245–247. The draft convention was never brought into force. In 1935 the League of Nations set up a Committee of Experts which drafted a convention closely following the Washington draft (League of Nations Document C. 449. M. 235. 1935. VIII), but it was never brought into force.

(1) *Act of 29 June 1888*

(25 Stat. 209.)

That the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand,

dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than two hundred and fifty dollars nor more than two thousand five hundred dollars and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor.

(2) *Act of 3 March 1899, Section 13*

(30 Stat. 1152.)

Sec. 13. That it shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary or any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms of floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided*, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public work: *And provided further*, That the Secretary of War, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in

navigable waters, within the limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful.

(3) *Oil Pollution Act, 7 June 1924 (excerpts)*

(43 Stat. 604–605.)

SEC. 2. When used in this Act, unless the context otherwise requires—

(*a*) The term "oil" means oil of any kind or in any form, including fuel oil, oil sludge, and oil refuse;

(*b*) The term "person" means an individual, partnership, corporation, or association; any owner, master, officer or employee of a vessel; and any officer, agent, or employee of the United States;

(*c*) The term "coastal navigable waters of the United States" means all portions of the sea within the territorial jurisdiction of the United States, and all inland waters navigable in fact in which the tide ebbs and flows;

(*d*) The term "Secretary" means the Secretary of War.—(43 Stat. 604–605, ch. 316.)

SEC. 3. That, except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, and except as otherwise permitted by regulations prescribed by the Secretary as hereinafter authorized, it shall be unlawful for any person to discharge, or suffer, or permit the discharge of oil by any method, means, or manner into or upon the coastal navigable waters of the United States from any vessel using oil as fuel for the generation of propulsion power, or any vessel carrying or having oil thereon in excess of that necessary for its lubricating requirements and such as may be required under the laws of the United States and the rules and regulations prescribed thereunder. The Secretary is authorized and empowered to prescribe regulations permitting the discharge of oil from vessels in such quantities, under such conditions, and at such times and places as in his opinion will not be deleterious to health or sea food, or a menace to navigation, or dangerous to persons or property engaged in commerce on such waters, and for the loading, handling, and unloading of oil.

3. Claims to the Continental Shelf

NOTE. Interest in the continental shelf has been expressed in various quarters over the past thirty years. As nearly as 1916 Spanish and Argentine

experts urged that national control should be extended over the waters above the continental shelf in order to prevent the depletion of fisheries, and the Imperial Russian Government claimed certain uninhabited islands north of Siberia on the ground that they formed "the northern continuation of the Siberian continental shelf"; the Russian claim was repeated by the Soviet Government in 1924. Concern for the protection of fisheries on the continental shelf was also expressed by the Portuguese representative in the League of Nations Committee of Experts for the Progressive Codification of International Law in 1927.

Fresh interest in the continental shelf has been manifested in the declarations made on behalf of nine states during the past four years. In addition to the declarations reproduced here, a draft law on the subject was submitted to the Cuban Congress in December 1946; and in Mexico, amendments to the Constitution have been proposed which would incorporate the substance of the Mexican declaration.

On the emergence of the continental shelf as a legal concept, see Richard Young, "Recent Developments with Respect to the Continental Shelf." 42 American Journal of International Law (1948), p.p. 849-857.

A. United States of America: Presidential Proclamation, 28 September 1945

(Proclamation No. 2667, 10 F. R. 12303.)

Whereas the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

Whereas its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

Whereas recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its

shores which are of the nature necessary for utilization of these resources;

Now, therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this 28th day of September, in the year of our Lord nineteen hundred and forty-five, and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:
DEAN ACHESON,
Acting Secretary of State.

[SEAL]

B. UNITED STATES OF AMERICA: EXECUTIVE ORDER, 28 SEPTEMBER 1945

(Executive Order No. 9633, 10 F. R. 12305.)

By virtue of and pursuant to the authority vested in me as President of the United States, it is ordered that the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States declared this day by proclamation to appertain to the United States and to be subject to its jurisdiction and control, be and they are hereby reserved, set aside, and placed under the jurisdiction and control of the Secretary of the Interior for administrative purposes, pending the enactment of legislation in regard thereto. Neither this Order nor the aforesaid procla-

mation shall be deemed to affect the determination by legislation or judicial decree of any issues between the United States and the several states, relating to the ownership or control of the subsoil and sea bed of the continental shelf within or outside of the three-mile limit.

HARRY S. TRUMAN

THE WHITE HOUSE,
September 28, 1945.

c. UNITED MEXICAN STATES: PRESIDENTAL DECLARATION, 29 OCTOBER 1945

(*El Universal*, Mexico City, 30 October 1945, pp. 1, 17.)

[Translation]

The experience of recent years has demonstrated the increasing necessity that States should preserve that natural wealth which in past times, for different reasons, has been outside their control and complete utilization.

As is well known, the lands which constitute the continental masses in general do not rise abruptly from the great oceanic deeps, but rather from a submarine platform which is called the continental shelf, which is delimited by a two-hundred-meter isobath (that is to say, the line which unites points of that depth), from the edges of which the slope descends sharply or gradually toward the deep zones in the middle of the seas; this platform manifestly constitutes an integral part of the continental countries, and it is neither reasonable nor prudent nor possible that Mexico should be unconcerned with the jurisdiction, utilization and control over it where it corresponds to Mexican territories in both oceans.

It is known at present, as the result of divers scientific investigations, that in said continental shelf there exists natural wealth, liquid and gaseous minerals, phosphates, calcium compounds, hydrocarbons, etc., of incalculable value, whose legal incorporation into the patrimony of the nation is of the greatest importance, and cannot be delayed.

On the other hand it is of equal urgency that the Mexican State, which has been endowed by nature with fishing resources of extraordinary richness, like those found, among other places, in the maritime zones off Lower California, should ensure that these resources are adequately protected, exploited, and developed; and this urgency is even greater at present, when the world, impoverished and made needy by the war imposed on it

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by totalitarianism, must develop its food production to the maximum.

In the years before the war the Western Hemisphere was obliged to watch permanent fishing fleets of extracontinental countries engage in the immoderate and exhaustive exploitation of this immense wealth, which, although certainly it must contribute to the welfare of the world, must obviously belong in the first instance to the country which possesses it and to the continent of which that country forms a part. By reason of the very nature of this wealth, it is indeispensable that this protection should be exercised by extending the control and supervision of the State to the places or zones indicated by science for the development of breeding-grounds of the high seas, irrespective of the distance separating them from the coast.

For these reasons, the Government of the Republic claims the whole continental shelf adjacent to its coasts and all and every one of the natural riches, known or still to be discovered, which are found in it, and will proceed to supervise, utilize and control the zones of fishing protection which are necessary for the conservation of this source of well-being.

The foregoing declaration does not mean that the Mexican Government is attempting to disregard legitimate rights of third parties, or that the right of free navigation on the high seas is affected, inasmuch as the sole end sought is to conserve these resources for the welfare of the nation, of the continent, and of the world.

My Government has already given orders to the competent authorities to proceed to draft the appropriate bills and to conclude the treaties which may be necessary.

Mexico, D. F., 29 October 1945.

The President of the Republic,

Manuel Avila Camacho.

d. Panama: Constitution, 1 March 1946 (excerpt)

(*Constitución de la República de Panamá, Edición Oficial.*)

[Translation]

Article 209. The following belong to the State and are for public use, and consequently cannot be the object of private appropriation: . . .

4th. The air space and continental shelf corresponding to the national territory.

e. Argentine Republic: Presidental Decree, 11 October 1946

[Decree 14,708/46, *Boletín Oficial*, 5 Dcember 1846; translation from 41 American Journal of International Law, Supplement (1947), pp. 11–12.]

[Translation]

Whereas:

The submarine platform, known also as the submarine plateau or continental shelf, is closely united to the mainland both in a morphological and in a geological sense;

The waters covering the submarine platform constitute the epicontinental seas, characterized by extraordinary biological activity, owing to the influence of the sunlight, which stimulates plant life (as exemplified in algae, mosses, etc.) and the life of innumerable species of animals, both susceptible of industrial utilization;

The Executive Power, in Article 2 of Decree No. 1, 386, dated January 24, 1944, issued a categorical proclamation of sovereignty over the "Argentine Continental Shelf" and the "Argentine Epicontinental Sea," declaring them to be "transitory zones of mineral reserves";

The State, through the medium of the *Yacimientos Petroliferos Fiscales* [Public Petroleum Deposits Administration], is exploiting the petroleum deposits discovered along the "Argentine Continental Shelf," thereby confirming the Argentine nation's right of ownership over all deposits situated in the aforesaid continental shelf;

It is the purpose of the Executive Power to continue, more and more intensively, its scientific and technical investigations relative to all phases of the exploration and exploitation of the animal, vegetable and mineral wealth, which offer such vast potentialities, contained in the Argentine continental shelf and in the corresponding epicontinental sea.

In the international sphere conditional recognition is accorded to the right of every nation to consider as national territory the entire extent of its epicontinental sea and of the adjacent continental shelf;

Relying upon this principle, the Governments of the United States of America and of Mexico have issued declarations asserting the sovereignty of each of the two countries over the respective peripheral epicontinental seas and continental shelves (Proclamation of President Truman, dated September 28, 1945, and Declaration of President Avila Camacho, dated October 29, 1945);

The doctrine in question, aside from the fact that it is implicitly accepted in modern international law, is now deriving support from the realm of science in the form of serious and valuable contributions, according to the testimony offered by numerous national and foreign publications and even by official educational programs; and

The manifest validity of the thesis invoked above, as well as the determination of the Argentine Government to perfect and preserve all the attributes inherently bound up with the exercise of national sovereignty, make it advisable to formulate the declaration pertinent to this matter, thereby amplifying the effects of the aforesaid Decree No. 1,386.

The President of the Argentine Nation, supported by a General Accord of the Ministers.

DECREES:

Article 1. It is hereby declared that the Argentine Epicontinental Sea and Continental Shelf are subject to the sovereign power of the Nation:

Article 2. For purposes of free navigation, the character of the waters situated in the Argentine Epicontinental Sea and above the Argentine Continental Shelf, remains unaffected by the present Declaration;

Article 3. The said Declaration shall be brought to the attention of the Honorable Congress, published, transmitted to the National Registry and filed.

Perón—J. Atilio Bramuglia.—Ramón Cereijo.—B. Gache Pirán.—Humberto Sosa Molina.—F. L. Anadón.— A. G. Borlenghi.—J. Carlos Picazo Elordy.—Juan Pistarini.

f. Chile: Presidential Declaration 25 June 1947

(*El Mercurio*, Santiago de Chile, 29 June 1947, p. 27.)

[Translation]

Considering:

1. That the Governments of the United States of America, of Mexico, and of the Argentine Republic, by presidential declarations made on 28 September 1945, 29 October 1945, and 11 October 1946 respectively, have proclaimed in a categorical manner the sovereignty of those States over the continental shelf adjacent to their coasts, and over the adjacent sea to the full extent necessary to conserve for those States the ownership of the natural riches known or to be discovered in the future.

2. That they have expressly proclaimed the rights of those

States to protect, conserve, regulate, and supervise fishing, in order to prevent illicit activities from threatening to diminish or wipe out the considerable riches of that type which are contained in the continental seas and which are indispensable for the welfare and progress of their respective peoples, measures whose justice is indisputable.

3. That particularly in the case of the Republic of Chile there is a manifest advantage in issuing an analogous proclamation of sovereignity, not only because of the fact that the exploitation of resources contained in the continental shelf which are essential to the national life is already under way, as is the case with the coal mines, which are being worked and will continue to expand into the territory which is covered by water, but also, even more important, because owing to its topography and lack of mediterranean extension, the country's life is bound up with the sea and with all the present and future riches contained in the sea, to a greater degree than in the case of any other nation.

4. That an international consensus recognizes that each country has the right to consider as national territory the whole extent of the adjacent epicontinental sea and continental shelf.

5. That the State has the obligation to protect and supervise the exploitation of the resources contained in its maritime, terrestrial, and aerial territory.

The President of the Republic declares:

1. The Government of Chile confirms and proclaims the national sovereignity over the whole continental shelf adjacent to the continental and insular coasts of the national territory whatever its depth may be, claiming, consequently, all the natural riches which exist on, in, or under said shelf, known or to be discovered.

2. The Government of Chile confirms and proclaims the national sovereignity over the seas adjacent to its coasts, whatever their depth may be, to the full extent necessary to reserve, protect, conserve, and utilise the natural resources and wealth of whatever nature, found on, in, or under said seas, placing under Government supervision the fishing and marine hunting industries in order to prevent this type of resources from being exploited to the prejudice of the inhabitants of Chile and diminished or destroyed to the detriment of the country and of the American Continent.

3. Demarcation of the zones of protection of maritime hunting and fishing in the continental and island seas which are

under the control of the Government of Chile will be made in virtue of this declaration of sovereignity, whenever the Government considers it suitable, by ratifying, amplifying, or in any manner modifying the said demarcations in conformity with the knowledge, discoveries, studies, and interests of Chile which may be made known in the future; at present said protection and control are declared over all the sea included between the perimeter formed by the coast and a mathematical parallel projected out to sea at a distance of two hundred marine miles from the continental coasts of Chile. With respect to the Chilean islands, this demarcation will be made by marking out a sea zone contiguous to the coasts of these islands, projected parallel to these coasts for two hundred marine miles from the whole circumference.

4. The present declaration of sovereignity does not disregard similar legitimate rights of other States, on the basis of reciprocity, and does not affect rights of free navigation on the high seas.

Santiago, 25 June 1947.

Gabriel González Videla,
President of the Republic.

g. Peru: Presidential Decree, 1 August 1947

(*El Peruano, Diario Oficial*, 11 August 1947, p. 1.)

[Translation]

The President of the Republic considering:

That the submarine platform or continental shelf forms a single morphological and geological unity with the continent;

That natural wealth exists in said platform, and it is indispensable to proclaim that this wealth forms part of the national patrimony;

That it is equally necessary that the State protect, conserve, and regulate the use of fishing resources and other natural wealth which is found in the epicontinental waters which cover the submarine platform and in the continental seas adjacent to it, in order that this wealth, essential to the national life, shall be exploited now and in the future in such a way that no detriment is caused to the economy of the country or to its food production;

That the fertilising wealth deposited by guano birds on the islands of the Peruvian coast also requires for its safeguard the

protection, conservation, and regulation of the use of the fishing resources which serve to nourish the said birds;

That the right to proclaim State sovereignity and national jurisdiction over the whole extent of the platform or submarine shelf, as well as over the epicontinental waters which cover it and over the sea waters adjacent to them, to the full extent necessary for the conservation and supervision of the riches contained therein, has been declared by other States and has been incorporated in practice into the international order (Declaration of the President of the United States of America of 28 September 1945; Declaration of the President of Mexico of 29 October 1945; Declaration of the President of the Argentine Nation of 11 October 1946; Declaration of the President of Chile of 23 June 1947);

That Article 37 of the Constitution of the State lays down that the mines, lands, forests, and in general all natural sources of wealth pertain to the State, except where others have legitimately acquired rights;

That in the exercise of sovereignity and in regard to national economic interests, it is the duty of the state to specify in an unequivocal manner the maritime domain of the Nation, within which the protection, conservation, and supervision of the aforementioned natural wealth will be exercised;

With the consultative vote of the Council of Ministers;

DECREES:

1. It is hereby declared that national sovereignity and jurisdiction extend to the submarine platform or continental and insular shelf adjacent to the continental and island coasts of the national territory, whatever may be the depth and the extent of said shelf.

2. The national sovereignity and jurisdiction are exercised as well over the sea adjacent to the coasts of the national territory, whatever its depth, to the extent necessary to reserve, protect, conserve, and utilise the natural resources and wealth of all types which are found in or under the said sea.

3. As a consequence of these declarations, the State reserves the right to establish the demarcation of zones of control and protection of the national wealth in the continental and island seas which are under the control of the Government of Peru, and to modify the said demarcation in accord with supervening circumstances, by reason of new discoveries or studies, or national interests which may become apparent in the future; and

declares at present that it will exercise the said control and protection over the sea adjacent to the coasts of Peruvian territory in a zone lying between those coasts and an imaginary line parallel to them, drawn on the sea at a distance of two hundred (200) marine miles, measured by following the line of the geographical parallels. With respect to the national islands, this demarcation will be drawn by marking out a zone of the sea contiguous to the coasts of the said islands, up to a distance of two hundred (200) marine miles measured from every point on the circumference of the islands.

4. The present declaration does not affect the right of free navigation of ships of all nations, in conformity with international law.

Given at Government House in Lima, the first day of August, one thousand nine hundred and forty-seven.

J. L. Bustamente R.
E. Garcia Sayán

h. Nicaragua: [1] Political Constitution, 22 January 1948

(*La Gaceta, Diario Oficial*, 22 January 1948.)

[Translation]

Article 2. The basis of the national territory is the *uti possidetis juris* of 1821. The territory between the Atlantic and Pacific Oceans and the Republics of Honduras and Costa Rica is included, and this territory embraces also the adjacent islands, the territorial sea, the continental shelves, and the air space and stratospheric space. Boundaries which are not yet determined shall be fixed by treaties and the law.

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[1] During April 1947, the Minister of the Interior presented to the Nicaraguan Chamber of Deputies a bill regarding the continental shelf, providing that Nicaraguan sovereignty should extend to all land under the oceans bordering on the national territory which was less than two hundred meters below the surface of the sea at mean low tide; and that if this claim should conflict with that of another nation, the boundary would be established by treaty. As passed by the Chamber of Deputies early in May 1947, the bill proclaimed sovereignty over the continental shelf, the limit of which was not defined. As the Nicaraguan Senate did not act on the bill approved by the Chamber of Deputies, it did not become law. In the Constitution adopted on 22 January 1948, the national territory is defined as including the continental shelves.

1. Costa Rica: Decree Law of 29 July 1948.

(*La Gaceta, Diario Oficial*, 29 July 1948.)

[Translation]

The Founding Junta of the Second Republic Considering:

1. That there is a pressing need of making arrangements for the protection and conservation of the natural wealth, known at present or which may be discovered in the future, which exists on, in, or under the continental or insular shelf or platform of the national territory and on, in, or under the seas adjacent to the continental and insular coasts of the Nation, in view of the fact that their conservation and adequate exploitation are of vital national interest and as such merit the extreme attention of the State and consequently make necessary the establishment of systems of supervision which the situation most urgently requires.

2. That in order to bring about a methodical techinical regulation of this national wealth, it is indispensable that the State should proclaim national sovereignity and jurisdiction over the submarine platform or continental shelf adjacent to the continental and insular coasts of the territory of the Nation, to the same extent that other States have done (declaration of the President of the United States of America of 28 September 1946; declaration of the President of the United Mexican States of 29 October 1945; declaration of the President of the Argentine Republic of 11 October 1946; declaration of the President of the Republic of Chile 23 June 1947; and decree of the President of the Republic of Peru of 1 August 1947).

3. That an international consensus proclaims and recognizes that each country has an inalienable right to consider as part of the national territory the whole extent of the adjacent epicontinental sea and the continental shelf.

4. That with reference to the exploitation and supervision of the resources contained in its maritime, terrestrial and aerial territory, it is the inescapable obligation of the States to give them its protection.

For the foregoing reasons,

DECREES:

Article 1. National sovereignity is confirmed and proclaimed over all the submarine platform or continental shelf adjacent to the continental and insular coasts of the national territory, at whatever depth said shelf lies, and the inalienable right of the

Nation to all the natural resources which exist on, in, or under said shelf or platform, known or to be discovered, is reaffirmed.

Article 2. National sovereignty is confirmed and proclaimed over the seas adjacent to the continental and insular coasts of the national territory, whatever their depth, to the extent necessary to protect, conserve, and utilize the natural resources and wealth which exist or may come into existence on, in, or beneath those seas, and from the present onward fishing and maritime hunting in said seas shall be under the supervision of the Government of Costa Rica with the object of preventing an unsuitable exploitation of natural resources from prejudicing the nationals and the economy of the Nation and from prejudicing the American Continent.

Article 3. Demarcation of the zones of protection of fishing and maritime hunting in the continental and island seas which in virtue of the present Decree Law are under the control of the Government of Costa Rica shall be made, in accordance with this declaration of sovereignty, whenever the Govermnent thinks it suitable, by ratifying, amplifying, or modifying said demarcations, as the national interest shall demand.

Article 4. The protection and control of the State are declared over all the sea included between the perimeter formed by the coast line and a mathematical parallel projected out to sea at a distance of two hundred marine miles from the continental Costa Rican coasts. With respect to the Costa Rican islands, the demarcation will be made by marking out a sea zone contiguous to the coasts of these islands, projected parallel to these coasts at a distance of two hundred miles from the whole circumference.

Article 5. The present declaration of sovereignty does not disregard similar legitimate rights of other States, on the basis of reciprocity, and does not affect rights of free navigation on the high seas.

Given in the Hall of Sessions of the Founding Junta of the Second Republic, San José, on the twenty-seventh day of July, one thousand nine hundred and forty-eight.

José Figueres.—Fernando Valverde Vega.—Uladislao Gámez Solano.—Bruce Masís Diviasi.—Benjamin Núñez Vargas.—Gonzalo Facio Segreda.—Alberto Martén Chavarría.—Francisco José Orlich Bolmarcich.—Raúl Blanco Cervantes.—Edgar Cardona Quirós.

J. Saudi Arabia: Royal Pronouncement, 28 May 1949

(Published by the Saudi Arab Government, 1949.)

[Translation]

We, Abdul Aziz Ibn Abdul Rahman Al Faisal Al Sa'ud, King of the Kingdom of Saudi Arabia.

After reliance on God Almighty, being aware of the need for the greater utilization of the world's natural resources which are the bounty of God, and of the desirability of giving encouragement to efforts to discover and make available such resources,

Recognizing that by God's Providence valuable resources may underlie parts of the Persian Gulf off the coasts of Saudi Arabia, and that modern technology by the grace of God makes it increasingly practicable to utilize these resources.

Appreciating that recognized jurisdiction over such resources is required in the interest of their conservation and prudent utilization when and as development is undertaken,

Deeming that the exercise of jurisdiction over such resources by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of a nature necessary for the utilization of these resources, and

Considering that various other nations now exercise urisdiction over the subsoil and sea bed of areas contiguous to their coasts,

Declare the following policy of the Kingdom of Saudi Arabia with respect to the subsoil and sea bed of areas of the Persian Gulf contiguous to the coasts of Our Kingdom:

The subsoil and sea bed of those areas of the Persian Gulf seaward from the coastal sea of Saudi Arabia but contiguous to its coasts are declared to appertain to the Kingdom of Saudi Arabia and to be subject to its jurisdiction and control. The boundaries of such areas will be determined in accordance with equitable principles by Our Government in agreement with other states having jurisdiction and control over the subsoil and seabed of adjoining areas. The character as high seas of the waters of such areas, the right to the free and unimpeded navigation of such waters and the air space above those waters, fishing rights in such waters, and the traditional freedom of pearling by the peoples of the Gulf are in no way affected.

This Pronouncement is made for the information and guidance of all whom it may concern.

May the Faithful always put their trust in God.

Promulgated in our Palace at Riyadh on the 1st day of the month of Shaaban of the year of the Hegira 1368, corresponding to 28th day of May 1949.

(Signed) Abdul Aziz.

4. Territorial Waters
Saudi Arabia: Royal Decree, 28 May 1949

(Translation published by the Saudi Arab Government, 1949.)

We, Abdul Aziz Ibn Abdul Rahman Al Faisal Sa'ud, King of the Kingdom of Saudi Arabia,

After reliance on God Almighty and in view of our desire to define the territorial waters of the Kingdom, have Decreed as Follows:

Article 1. For the purposes of this Decree,

(*a*) The term "nautical mile" is the equivalent of 1852 meters;

(*b*) The term "bay" includes any inlet, lagoon or other arm of the sea;

(*c*) The term "island" includes any islet, reef, rock, bar or permanent artificial structure not submerged at lowest low tide;

(*d*) The term "shoal" denotes an area covered by shallow water, a part of which is not submerged at lowest low tide; and

(*e*) The term "coast" refers to the coasts of the Red Sea, the Gulf of Aqaba, and the Persian Gulf.

Article 2. The territorial waters of the Kingdom of Saudi Arabia, as well as the air space above and the soil and subsoil beneath them, are under the sovereignty of the Kingdom, subject to the provisions of international law as to the innocent passage of vessels of other nations through the coastal sea.

Article 3. The territorial waters of the Kingdom of Saudi Arabia embrace both the inland waters and the coastal sea of the Kingdom.

Article 4. The inland waters of the Kingdom include:

(*a*) The waters of the bays along the coasts of the Kingdom of Saudi Arabia;

(*b*) The waters above and landward from any shoal not more than twelve nautical miles from the mainland or from a Saudi Arabian island;

(*c*) The waters between the mainland and a Saudi Arabian

island not more than twelve nautical miles from the mainland; and

(*d*) The waters between Saudi Arabian islands not farther apart than twelve nautical miles.

Article 5. The coastal sea of the Kingdom of Saudi Arabia lies outside the inland waters of the kingdom and extends seaward for a distance of six nautical miles.

Article 6. The following are established as the base-lines from which the coastal sea of the Kingdom of Saudi Arabia is measured:

(*a*) Where the shore of the mainland or an island is fully exposed to the open sea, the lowest low-water mark on the shore;

(*b*) Where a bay confronts the open sea, lines drawn from headland to headland across the mouth of the bay;

(*c*) Where a shoal is situated not more than twelve nautical miles from the mainland or from a Saudi Arabian island, lines drawn from the mainland or the island and along the outer edge of the shoal:

(*d*) Where a port or harbor confronts the open sea, lines drawn along the seaward side of the outermost works of the port or harbor and between such works;

(*e*) Where an island is not more than twelve nautical miles from the mainland, lines drawn from the mainland and along the outer shores of the island;

(*f*) Where there is an island group which may be connected by lines not more than twelve nautical miles long, of which the island nearest to the mainland is not more than twelve nautical miles from the mainland, lines drawn from the mainland and along the outer shores of all the islands of the group if the islands form a chain, or along the outer shores of the outermost islands of the group if the islands do not form a chain; and

(*g*) Where there is an island group which may be connected by lines not more than twelve nautical miles long, of which the island nearest to the mainland is more than twelve nautical miles from the mainland, lines drawn along the outer shores of all the islands of the group if the islands form a chain, or along the outer shores of the outermost islands of the group if the islands do not form a chain.

Article 7. If the measurement of the territorial waters in accordance with the provisions of this Decree leaves an area of high sea wholly surrounded by territorial waters and ex-

tending not more than twelve nautical miles in any direction, such area shall form part of the territorial waters. The same rule shall apply to a pronounced pocket of high sea which may be wholly enclosed by drawing a single straight line not more than twelve nautical miles long.

Article 8. If the inland waters described in Article 4, or if the coastal sea measured from the base-lines fixed by Article 6 of this Decree be overlapped by the waters of another State, boundaries will be determined by Our Government in agreement with the State concerned in accordance with equitable principles.

Article 9. With a view to assuring compliance with the laws of the Kingdom relating to security, navigation, and fiscal matters, maritime surveillance may be exercised in a contiguous zone outside the coastal sea, extending for a further distance of six nautical miles and measured from the base-lines of the coastal sea, provided however that nothing in this Article shall be deemed to apply to the rights of the Kingdom with respect to fishing.

Article 10. Our Ministers of Foreign Affairs and of Finance are charged with the execution of this Decree.

Article 11. This Decree will come into effect as from the date of its publication in the official gazette.

Promulgated in our Palace at Riyadh on the 1st day of the month of Shaaban of the year of the Hegira 1368, corresponding to the 28th day of May 1949.

(Signed) Abdul Aziz

IV. LAW OF THE AIR

1. United States Airspace Reservations

Note. The Air Commerce Act of 20 May 1926 (44 Stat. 570) provides in section 4:

"The President is authorized to provide by Executive order for the setting apart and the protection of airspace reservations in the United States for national defense or other governmental purposes and, in addition, in the District of Columbia for public safety purposes."

The Canal Zone Code, as amended by the Act of 9 July 1937 (50 Stat. 486) empowers the President to make rules and regulations, until Congress provides otherwise, governing aircraft and air navigation within the airspace above the lands and waters of the Canal Zone.

(1) *Canal Zone Military Airspace Reservation*

(Executive Order No. 5047, 18 February 1929; superseded by No. 8125, 12 September 1939 4 F. R. 3899, ammended by No. 8271, 16 October 1939, 4 F. R. 4277; still in force.)

[Area:] The airspace above the Canal Zone, including the territorial waters within the three-mile marine boundary at each end of the Canal."

[Regulations:] SEC. 2. *Unlawful navigation of aircraft in military airspace reservation.* It shall be unlawful to navigate any foreign or domestic aircraft into, within, or through the Canal Zone Military Airspace Reservation otherwise than in conformity with this Executive Order: *Provided, however,* that none of the provisions of this order shall apply to military, naval, or other public aircraft of the United States.

SEC. 3. *Authorization for entrance of aircraft into the Canal Zone Military Airspace Reservation, and navigation therein.* Aircraft, foreign or domestic, shall be navigated into, within, or through the Canal Zone Military Airspace Reservation only under and in compliance with an authorization granted after the effective date of this order (a) by the Civil Aeronautics Authority in the case of civil aircraft, and (b) by the Secretary of State in the case of all other aircraft. Such authorization shall be granted only after consultation with the Secretary of War, and shall be subject to the further rules and regulations contained in or issued under this order, as well as those applicable generally to the entrance of aircraft into, and their navigation within or through, the Canal Zone Military Airspace Reservation. . . . "

(2) *Airspace Reservations over Harbors Closed to Foreign Vessels*

(Executive Order No. 5281, 17 February 1930; discontinued as to places within the continental limits of the United States (i.e. Tortugas, Florida) by No. 8961, 6 December 1941, 6 F. R. 6325; superseded as to Subic Bay by No. 8718, 22 March 1941, 6 F. R. 1621, discontinued by No. 9720, 8 May 1946; superseded as to Kiska by No. 8680, 14 February 1941, 6 F. R. 1014; otherwise still in force.)

[Areas:] The airspace over each of the hereinafter named harbors that are declared closed ports by Executive Order No. 1613, dated September 23, 1912. . . . [1]

Tortugas, Florida;

Great Harbor, Culebra;

[1] *Ante,* p. 157.

Guantanamo Naval Station, Cuba;
Pearl Harbor, Hawaii;
Guam;
Subic Bay, Philippine Islands;
Kiska, Aleutian Islands.

[Regulations:] At no time shall civil aircraft of any kind be navigated within the airspace reservations above defined except by special authority of the United States Navy Department in each case.

(3) *Airspace Reservation in Chesapeake Bay*[2]

(Executive Order No. 5710, 14 September 1931; in force from 5 to 20 October 1931.)

[Area:] The airspace over . . . waters within a radius of 5 miles of latitude 37°43′12″, longitude 76°04′, in Chesapeake Bay near the southern end of Tangier Sound.

[Regulations:] No aircraft . . . shall navigate within the areas herein created except such as are authorized by the Secretary of the Navy in connection with national defense operations or for other governmental purposes."

(4) *Airspace Reservation over the District of Columbia*

(Executive Order No. 6023, 11 February 1933; in force from 9 a.m. to 5 p.m., 4 March 1933.)

[Area:] The airspace over the District of Columbia.

[Regulations:] Between the time above specified [9 a.m. to 5 p.m., 4 March 1933], no aircraft shall be navigated through the airspace over the District of Columbia except such aircraft as may be specifically permitted by the Secretary of Commerce, between such time and over such places as the Secretary of Commerce in his discretion may determine.

(5) *Airspace Reservations over Certain Military and Naval Reservations and Other Areas*

(Executive Order No. 7138, 12 August 1935; discontinued as to places within the continental limits of the United States by No. 8961, 6 December 1941, 6 F. R. 6325.)

[Areas:] The airspace over the military and naval reservations and other areas hereinafter designated . . .

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[2] A defensive sea area was established at the same time in the waters in the same area.

Picatinny Arsenal, Dover, New Jersey.

Savanna Ordnance Depot, Savanna, Illinois.

Nansemond Ordnance Depot, Portsmouth, Virginia.

Wingate Ordnance Depot, Gallup, New Mexico.

Camp Stanley Ordnance Reservations, Leon Springs, Texas.

Fort Hancock, Sandy Hook, New Jersey.

Fort Saulsbury, about 4 miles east of Milford, Delaware.

Fort Pickens, western portion of Santa Rosa Island, Pensacola Bay, Florida.

Fort Barry, near Point Bonita Lighthouse, San Francisco Bay, Claifornia.

Fort Canby, near Cape Disappointment Lighthouse, Washington.

Fort Casey, near Admiralty Head Lighthouse, Washington.

Naval Ammunition Depot, Hingham, Massachusetts.

Naval Ammunition Depot, Fort Lafayette, New York.

Naval Ammunition Depot, Lake Denmark, New Jersey.

Naval Ammunition Depot, St. Juliens Creek, Virginia.

Naval Ammunition Depot, Hawthorne, Nevada.

Naval Ammunition Depot, Mare Island, California.

Naval Ammunition Depot, Puget Sound, Washington.

Naval Mine Depot, Yorktown, Virginia.

Naval Torpedo Station, Newport, Rhode Island.

Naval Torpedo Station, Keyport, Washington.

Naval Ordnance Plant, Baldwin, Long Island, New York.

Naval Fuel Depot, San Diego, California.

That part of the Aleutian Islands, Alaska, with their territorial waters, lying west of the 167th meridan, west longitude.

[Regulations:] Civil aircraft, for reasons of public safety, are forbidden to be operated except by special permission in each case of that department of the Government of the United States having jurisdiction over the reservations or areas concerned.

(6) *Airspace Reservation over a Portion of the District of Columbia*

(Executive Order No. 7910, 16 June 1938, 3 F. R. 1437; superseded by No. 8378,18 March 1940, 5 F. R. 1114; spuerseded by No. 8950, 26 November 1941, 6 F. R. 6101, amended by No. 9153, 30 April 1942, 7 F. R. 3275; still in force.)

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[Area:] All that area within the City of Washington, D. C., lying within the following-described boundary:

"Beginning at the eastern end of the Arlington Memorial Bridge (Lat. 38°53′19″ N.; Long. 77°3′9″ W.)(also identifiable as a point adjacent to the Lincoln Memorial Monument); thence north along the eastern bank of the Georgetown Channel of the Potomac River to the eastern end of the Key Bridge (Lat. 38°54′14″ N.; Long. 77°04′15″ W.);

"thence a distance of approximately 0.3 miles on a true bearing of 307° to Georgetown University (Lat. 38°54′25″ N.; Long. 77°04′28″ W.) (identifiable by the Astronomical Observatory situated within the University Grounds);

"thence a distance of approximately 1.7 miles on a true bearing of 6° to the National Cathedral (Lat. 38°55′52″ N.; Long. 77°04′17″ W.) (identifiable by the spires);

"thence a distance of approximately 3.4 miles on a true bearing of 78° to the Scott Building of the Soldiers' Home (Lat. 38°56′31″ N.; Long. 77°00′41″ W.) (identifiable by the clock cupola above the roof of such building);

"thence a distance of approximately 3.1 miles on a bearing of 175° true to the center of the Union Station (Lat. 38°53′49″ N.; Long. 77°00′23″ W.) (identifiable by the south southwest terminal of the railroad tracks);

"thence a distance of 0.4 miles on a true bearing of 120° to the center of Stanton Square (Lat. 38°53′36″ N.; Long.77°00′00″ W.) (identifiable as the conjunction of Massachusetts Avenue, Maryland Avenue, and 4th, 5th, and 6th Streets, Northeast, with such Square);

"thence a distance of approximately 0.8 of a mile on a true bearing of approximately 208° to the intersection of the centerlines of New Jersey Avenue, North Carolina Avenue, and E Street Southeast (Lat. 38°53′00″ N.; Long. 77°00′24″ W.) (identifiable as a point adjacent to the smokestack of the Capitol power house);

"thence a distance of approximately 1.4 miles on a true bearing of approximately 268° to the center of the railroad bridge over the channel of water connecting the Tidal Basin and the Washington Channel (Lat. 38°52′58″ N.; Long. 77°01′57″ W.); and

"thence a distance of approximately 1.1 miles on a true bearing of approximately 291° to the point of beginning."

[Regulations:] Within [this area] no person shall navigate a

civil aircraft except by special permission of the Administrator of Civil Aeronautics.

(7) *Sitka Naval Airspace Reservation*

(Executive Order No. 8597, 18 November 1940, 5 F. R. 4559; discontinued by No. 9720, 8 May 1946, 11 F. R. 5105.)

[Area:] The airspaces over the hereinafter described areas in the Territory of Alaska and over the territorial waters within the three-mile limits adjacent thereto . . .

All of Japonski Island situated immediately west of the City of Sitka, Alaska, and that part of Sitka Bay lying south of Japonski Island and west of the main channel described by metes and bounds as follows: Beginning at the southeast point of Japonski Island at angle point No. 7 of the meanders of the U. S. Survey No. 1496; thence east approximately 1200 chains to the center of the main channel; thence south 45° east along the main channel approximately 20.00 chains; thence south 45° west approximately 9.00 chains to the southwestern point of Aleutski Island; thence south 79° west approximately 40.00 chains to the southern point of Fruit Island; thence north 60° west approximately 50.00 chains to the southwestern point of Japonski Island at angle point No. 35 of the U. S. Survey No. 1496; thence easterly with the meanders of Japonski Island to the point of beginning including Charcoal, Aleutski, Harbor, Alice, Love, Fruit Islands, and a number of smaller unnamed islands, and containing a total land and water area of approximately 195 acres, being the same area described in Executive Order No. 8216, dated July 25, 1939.

[Regulations:] At no time shall any aircraft, other than public aircraft of the United States, be navigated into, within, or through Sitka Naval Airspace Reservation or Kodiak Naval Airspace Reservation, unless authorized by the Secretary of the Navy.

(8) *Kodiak Naval Airspace Reservation*

(Executive Order No. 8597, 18 November 1940, 5 F. R. 4559 still in force.)

[Area:] The airspaces over the hereinafter described areas in the Territory of Alaska and over the territorial waters within the three-mile limits adjacent thereto . . .

The eastern portion of Kodiak Island described by metes and bounds as follows: Beginning at a point at Latitude 57°47′0″ north, Longitude 152°26′30″ west, thence,

W.to Lat. 57°47′0″ N., Long. 152°36′0″ W.

S. to Lat. 57°44′30″ N., Long. 152°36′0″ W.
SW. to Lat. 57°42′0″ N., Long. 152°38′0″ W.
S. to Lat. 57°39′30″ N., Long. 152°38′0″ W.
E. to Lat. 57°39′30″ N., Long. 152°30′0″ W.
NE. to Lat. 57°42′0″ N., Long. 152°26′0″ W.
N. to Lat. 57°44′0″ N., Long. 152°26′0″ W.
NW. to Lat. 57°47′0″ N., Long. 152°26′30″ W.

to the point of beginning being the same area described in Executive Order No. 8278, dated October 28, 1939.

[Regulations identical with No. 7 above.]

(9) *Kiska Island Naval Airspace Reservation; Unalaska Island Naval Airspace Reservation*[3]

(Executive Order No. 8680, 14 February 1941, 6 F. R. 1014, corrected by No. 8729, 2 April 1941, 6 F. R. 1791; still in force.)

[Areas:] The airspaces over the islands of Kiska and Unalaska and over the territorial waters between the high-water marks and the three-mile marine boundaries surrounding them.

[Regulations:] At no time shall any aircraft, other than public aircraft of the United States, be navigated into either of the naval airspace reservations herein set apart and reserved, unless authorized by the Secretary of the Navy.

[3] A defensive sea area was established at the same time in the waters in the same area.

(10) *Kaneohe Bay Naval Airspace Reservation*[4]

(Executive Order No. 8681, 14 February 1941, 6 F. R. 1014; still in force.)

[Area:] The airspace over the territorial waters within Kaneohe Bay between extreme high-water mark and the sea and in and about the entrance channel within a line bearing northeast true extending three nautical miles from Kaoio Point, a line bearing northeast true extending four nautical miles from Kapoho Point, and a line joining the seaward extremities of the two above-described bearing lines.

[Regulations:] At no time shall any aircraft, other than public aircraft of the United States, be navigated into Kaneohe Bay Naval Airspace Reservation, unless authorized by the Secretary of the Navy.

(11) *Palmyra Island Naval Airspace Reservation; Johnston Island Naval Airspace Reservation; Midway Island Naval Airspace Reservation; Wake Island Naval Airspace Reservation; Kingman Reef Naval Airspace Reservation* [4]

[4] A defensive sea area was established at the same time in the waters in the same area.

(Executive Order No. 8682, 14 February 1941, 6 F. R. 1015, corrected by No. 8729, 2 April 1941, 6 F. R. 1791; discontinued as to Palmyra Island by No. 9881, 4 August 1947, 12 F. R. 5325; otherwise still in force.)

[Areas:] The airspaces over the islands of Palmyra, Johnston, Midway, Wake, and Kingman Reef and over the territorial waters between the extreme high-water marks and the three-mile marine boundaries surrounding them.

[Regulations similar to No. 10 above.]

(12) *Rose Island Naval Airspace Reservation; Tutuila Island Naval Airspace Reservation; Guam Island Naval Airspace Reservation* [5]

(Executive Order No. 8683, 14 February 1941, 6 F. R. 1015, corrected by No. 8729, 2 April 1941, 6 F. R. 1791; still in force.)

[Area:] The airspaces over the islands of Rose, Tutuila, and Guam and over the territorial waters between the extreme high-water marks and the three-mile marine boundaries surrounding them.

[Regulations similar to No. 10 above.]

(13) *Culebra Island Naval Airspace Reservation* [5]

(Executive Order No. 8684, 14 February 1941, 6 F. R. 1016; still in force.)

[Area:] The airspace over the island of Culebra, Puerto Rico and over the territorial waters between the extreme high-water mark and the three-mile marine boundary surrounding it.

[Regulations similar to No. 10 above.]

(14) *Subic Bay Naval Airspace Reservation* [5]

(Executive Order No. 8718, 22 March 1941, 6 F. R. 1621; discontinued by No. 9720, 8 May 1946, 11 F. R. 5105.)

[Area:] The airspace over the Subic Bay Naval Reservation, Olongapo, Philippine Islands, and over the territorial waters within Subic Bay between extreme high water mark and the sea and in and about the entrance channel within a line bearing true southwest extending three nautical miles from Sanpaloc Point, and a line joining the seaward extremities of the above two bearing lines.

[Regulations similar to No. 10 above.]

(15) *Guantanamo Bay Naval Airspace Reservation* [6]

(Executive Order No. 8749, 1 May 1941, 6 F. R. 2252; still in force.)

[Area:] The airspace over the Guantanamo Naval Reservation

[5] A defensive sea area was established at the same time in the waters in the same area.

[6] A defensive sea area was established at the same time in the waters in the same area.

and over the territorial waters within Guantanamo Bay between high-water mark and the sea and in and about the entrance channel within a line bearing true south extending three nautical miles from the shore line of the eastern boundary of Guantanamo Naval Reservation, as laid down in the Agreement between the United States of America and the Republic of Cuba signed by the President of Cuba on February 16, 1903, and by the President of the United States on February 23, 1903, a line bearing true south extending three nautical miles from the shore line of the western boundary of said Naval Reservation, and a line joining the seaward extremities of the above two bearing lines.

[Regulations similar to No. 10 above.]

(16) *Airspace Reservation over Portions of Ulster and Duchess Counties, New York*

(Executive Order No. 9090, 6 March 1942; discontinued by No. 9566, 5 June 1945, 10 F. R. 6793.)

[Area:] The airspace above the following described portions of Ulster and Duchess Counties, New York . . .

All that area within Ulster and Duchess Counties, New York, lying within the following-described boundary:

Beginning at the River Landing on the West Bank of Hudson River at East Kingston, Ulster County; thence in an East-Northeasterly direction of the center line of the Central New England Railroad Bridge over Shehomeko Creek at Pine Plains, Duchess County; thence South-Southesat to the center line of the New York Central Railroad Bridge over Ten-Mile River at Dover Plains, Duchess County; thence West-Southwest to the Southwest corner of the Mid-Hudson Bridge at Poughkeepsie, New York, and continuing on this line to the West Bank of the Hudson River, Ulster County; thence along the West Bank of the Hudson River to the point of origin.

[Regulations:] Within [this airspace reservation] no person shall navigate a civil aircraft except by special permission of the Administrator of Civil Aeronautics.

2. Foreign State Aircraft Over National Territory

Note. The principle that a State has complete and exclusive sovereignty over the air-space above its territory has been repeatedly enunciated during the past thirty years. It was embodied in the Convention for the Regulation of Aerial Navigation signed at Paris on 13 October 1919 (11 League of Nations Treaty Series, p. 173); in the Convention on Commercial Aviation signed at Habana on 20 February 1928 (U. S. Treaty Series, No. 840); and in the Convention on International Civil Aviation signed at Chicago on 7 December 1944 (U. S. Treaties and Other International Acts Series, No. 1591).

In line with this principle, the Paris Convention provided (Article 32) that "no military aircraft of a contracting State shall fly over the territory of another contracting State nor land thereon without special authorization." The Chicago Convention contains a similar provision (Article 3c) as to state aircraft, i. e., aircraft used in military, customs and police services. Both Conventions leave in doubt the treatment to be accorded to foreign State aircraft forced by weather conditions or distress to fly over a State's territory. Hence, the question arises as to the extent to which an analogy to foreign surface ships forced into a State's territorial waters is to be applied.

This question became acute in incidents which occurred in 1946, when military transport planes of the United States, en route from Vienna in Austria to Udine in Italy, flew over the territory of Yugoslavia. On 19 August 1946, another such plane was shot down by Yugoslav fighters and all of its crew perished. The Yugoslav Government later paid to the United States an indemnity of $150,000 for the lives of the five members of the crew who perished on the latter occasion; no indemnity was paid for either of the aircraft which were lost. The published diplomatic correspondence between the two Governments is reproduced here, in part.

a. The American Ambassador in Belgrade to the Yugoslav Ministry of Foreign Affairs, published 20 August 1946

(15 Department of State Bulletin, p. 415.)

Reference is made to previous representations with regard to alleged violations of Yugoslav territory by United States aircraft and the forcing to the ground by Yugoslav aircraft of an American C–47 air transport on August 9. United States authorities in Austria and Italy have now reported the results of their investigation in this connection, from which it appears that on August 9 airplane no. 43–15376 of the C–47 type, while on a regular flight from Vienna to Udine encountered bad weather over Klagenfurt and was engaged in an effort to find its bearings when at approximately 1300 it was attacked by Yugoslav fighters. The attackers fired repeated bursts at the aircraft as a result of which one passenger was seriously wounded and the plane forced to crash land, wheels retracted, in a field near Kranj twelve kilometers from Ljubljana. As for other "violations" of Yugoslav territory referred to in the Foreign Office's note of August 10, alleged to total 172 between July 16 and August 8, United States authorities in Austria and Italy report that only 74 flights have taken place between those dates and that operations officers at Hoersching and Tulln airfields have thoroughly briefed all crews to use approved routes avoiding Yugoslavia.

It would be assumed that the authorities of Yugoslavia would wish to render a maximum of assistance and succor to aircraft

of a friendly nation when the latter are forced by the hazards of navigation in bad weather over dangerous mountain barriers to deviate from their course and seek bearings over Yugoslav territory. On the contrary, Yugoslav fighter aircraft have seen fit without previous warning to take aggressive action against such a United States transport plane, the identification of which was clearly apparent from its markings, and have forced it to crash land after wounding one of its passengers. Subsequently Yugoslav authorities have detained the plane, its crew and passengers and refused to permit American consular officers access to the plane or personnel until specific representations were made by the United States Embassy to the latter effect. Finally, no reply has been forthcoming to the Embassy's requests that the crew, passengers and plane be released from detention and the personnel permitted to depart from Yugoslavia without delay. Meanwhile, it is reported from Trieste that a second United States plane en route to Italy from Austria is missing after having last reported itself under machine gun attack.

The Embassy is instructed to protest most emphatically against this action and attitude of the Yugoslav authorities, to renew the United States demand for immediate release of the passengers and crew now able to travel, and in conclusion to request an urgent Yugoslav statement whether in the future the United States Government can expect that the Yugoslav Government will accord the usual courtesies, including the right of innocent passage over Yugoslav territory, to United States aircraft when stress of weather necessitates such deviation from regular routes. The Yugoslav authorities have already received United States assurance that United States planes will not cross Yugoslavia without prior clearance except when forced to do so by circumstances over which they have no control. The United States Government, pending receipt of detailed information regarding injury to persons on these two planes and the cost of repairing planes, fully reserves its position in matters of claims for compensation.

b. The Acting Secretary of State to the Yugoslav Chargé d' Affaires in Washington, 21 August 1946

(15 Department of State Bulletin, p. 417.)

Sir: The American Embassy in Belgrade has informed me of the contents of the message received from the Yugoslav Foreign Office on August 20. The replies of the Yugoslav Government

to our inquiries are wholly unsatisfactory to the Government and shocking to the people of the United States.

Your government expresses regret because of what you call an unhappy "accident." Your government is aware that this was no accident; that a fighter plane of your government deliberately fired upon a passenger plane of the United States Government. Your government states that one reason for the "accident" was that since August 10th there have been forty-four instances where American planes flew over Yugoslav territory. The records show that since August 10 the total number of flights scheduled for that route was only thirty-two. These flights were made under instructions to avoid flying over Yugoslav territory and if in any instance a plane was over Yugoslav territory it was only because the pilot was forced by bad weather outside of the corridor.

But this attack of August 19th was not the first. On August 9 a United States passenger plane while in the vicinity of Klagenfurt was fired upon by a fighter plane of the Yugoslav Government. It was forced to make a crash landing. When it landed, the crew and passengers were taken into custody by Yugoslav authorities and are still held as prisoners of the Yugoslav Government.

For some days the representative of the United States Government was unable to communicate with these American citizens. Finally he was permitted to do so but only in the presence of the military authorities of Yugoslavia. Twelve days have passed and these American citizens are still held by Yugoslavia.

The message now received from our representative indicates that on the 19th of August when this second passenger plane was fired upon, some if not all, of the occupants were killed. They met their death not by "accident" but by the deliberate acts of Yugoslav authorities. The excuse given for taking the lives of these American citizens is that the plane in which they were travelling was a few kilometers inside of Yugoslav territory. Your government asserts that for twelve minutes prior to the attack the pilot of the plane was "invited" to land. At the time you claim the pilot was "invited" to land the records at Klagenfurt show the pilot advised the Klagenfurt station that he was over Klagenfurt, which is well outside of Yugoslav territory, and was all right.

These outrageous acts have been perpetrated by a government that professes to be a friendly nation. Until we have had opportunity to confer with the survivors of these two attacks

and we receive such other evidence as is available, we make no statement as to the exact location of the two planes when they were attacked.

Regardless of whether the planes were a short distance within or without the corridor, they were unarmed passenger planes en route to Udine, in Italy. Their flight in no way constituted a threat to the sovereignty of Yugoslavia. The use of force by Yugoslavia under the circumstances was without the slightest justification in international law, was clearly inconsistent with relations between friendly states, and was a plain violation of the obligations resting upon Yugoslavia under the Charter of the United Nations not to use force except in self-defense. At no time did the Yugoslav Government advise the United States Government that if one of its planes should, because of weather conditions, be forced a mile or two outside of the corridor or, because of mechanical troubles, should find itself outside of that corridor, the Yugoslav Government would shoot to death the occupants of the plane. The deliberate firing without warning on the unarmed passenger planes of a friendly nation is in the judgment of the United States an offense against the law of nations and the principles of humanity.

Therefore the Government of the United States demands that you immediately release the occupants of these planes now in your custody and that you insure their safe passage beyond the borders of Yugoslavia.

The Government of the United States also demands that its representatives be permitted to communicate with any of the occupants of the two planes who are still alive.

If within forty-eight hours from the receipt of this note by the Yugoslav Government these demands are complied with, the United States Government will determine its course in the light of the evidence then secured and the efforts of the Yugoslav Government to right the wrong done.

If, however, within that time these demands are not complied with, the United States Government will call upon the Security Council of the United Nations to meet promptly and to take appropriate action.

c. The Yugoslav Prime Minister to the American Ambassador in Belgrade, 23 August 1946

(15 Department of State Bulletin, p. 419.)

Excellency: With reference to our yesterday conversation have the honor to advise you as follows

Regarding the factual state I have nothing to add to the note to the Yugoslav Ministry of Foreign Affaires No. 9860 of August 20, but solely that subsequent reports do not confirm the first ones according to which two members of the crew would have bailed out in parachutes. It appears now that the parachuting object eye-witnesses mistook for occupants of the plane might have been two gasoline barrels wrapped in two sheets. Investigation still being carried out.

It is not possible for the moment to produce a definite detailed report of what had happened apart from that I can on this occasion emphasize only once again the statements of the Ministry's note quoted above which correctly described the circumstances which were causing this regrettable occurrence. In connection with the statements put forth during our conversation yesterday, I have first to point out that it is not correct that the plane had only been a mile or two within Yugoslav territory in the moment when forced down. The plane was 50 kilometers from the nearest point on the frontier. Further I have to underline once more that the Yugoslav fighters were, during almost a quarter of an hour time, inciting the plane to land. They also wanted to show the route to the airport only three miles far away but the aircraft definitely refused compliance with the landing order. Accordingly it does not correspond with the facts the Yugoslav fighters had not warned the plane nor is it correct that the plane had been forced because of weather conditions to deviate from its course. It is notorious in the country where the accident took place that the day was absolutely clear and of perfect visibility.

As for the occupants of the plane forced down August 9, once the investigation got terminated the Yugoslav Government suspended on August 21 any movement limitation imposed upon the persons concerned. During, and for the purpose of the investigation itself, Mr. Hohenthal, the American Consul, was informed thereof and at 7:30 hours on August 22 he took over. It is evident that they are allowed to leave Yugoslavia whenever they want to. Your Government may also, of course, dispose at any time over the aircraft question.

As for the occupants of the plane which crashed on August 19, as already mentioned, none has been found so far. The Yugoslav Government will be only glad to permit the representative of your Government to communicate with any of them who might have survived.

Respectfully yours,

August 23 J. B. Tito.

d. The Yugoslav Prime Minister to the American Ambassador in Belgrade, 31 August 1946

(15 Department of State Bulletin, p. 505.)

No. 10381

Belgrade, *August 31, 1946.*

Excellency: With reference to our conversation in Bled on August 22, 1946, as well as to the statements I made on that occasion on behalf of the Government of the Federative Peoples Republic of Yugoslavia, not all of which have been laid down in my written reply of August 23, I have to confirm herewith:

(*One*) The Government of the Federative Peoples Republic of Yugoslavia regrets indeed that American pilots lost their lives at the accident of August 19, near Bled, when an American military transport plane crashed after disobeying signals to land;

(*Two*) As I already stated both orally and in writing to Anglo-American correspondents, I have issued orders to our military authorities to the effect that no transport planes must be fired at any more, even if they might intentionally fly over our territory without proper clearance, but that in such cases they should be invited to land; if they refused to do so their identity should be taken and the Yugoslav Government informed hereof so that any necessary steps could be undertaken through appropriate channels.

I also confirm my statement made on that occasion, on behalf of the Government of the Federative Peoples Republic of Yugoslavia that I consider objectless the American Government's note which was, to our surprise, unnecessarily and without reason too strong towards an Allied country as is Yugoslavia; the Government of the Federative Peoples Republic of Yugoslavia had ordered 24 hours prior to the handing over of the said note that the crew of the plane be released and that they be allowed to leave this country. The crew had been taken over by Mr. Hohenthal, the American Consul at 7:30 hours of August 22, i.e. full 8 hours before the note in connection with that crew was handed over.

Respectfully yours,

Tito MP.

e. The Acting Secretary of State to the Yugoslav Chargé d'Affaires in Washington, 3 September 1946 (excerpts)

(15 Department of State Bulletin, p. 501.)

Sir: I refer to a note dated August 30, 1946 which you left

at the Department of State in regard to alleged flights of United States planes over Yugoslav territory. In your note you refer to several notes of protest to the United States Government requesting that flights over Yugoslav territory be stopped and that inquiries be undertaken toward establishing those responsible . . . .

In summary, the Yugoslav Government has alleged that over the period from July 16 to August 29 278 unauthorized flights were made over Yugoslav territory, a high proportion of those flights being by bombers and fighters.

The United States Government has made a thorough and comprehensive investigation of these alleged flights over Yugoslav territory. In the course of this investigation the records of the various military headquarters and establishments of the United States in Europe were checked and the whereabouts of every American military plane in Europe during the period July 16 to August 29, inclusive was established. As a result of this exhaustive investigation, I am now in a position to provide you with the facts in regard to flights of American planes . . . .

[The Acting Secretary of State reviewed the results of the investigation and reached the conclusion that the violations of Yugoslav territory must have been made by planes other than United States planes.]

No American planes have flown over Yugoslavia intentionally without advance approval of Yugoslav authorities unless forced to do so in an emergency. I presume that the Government of Yugoslavia recognizes that in case a plane and its occupants are jeopardized, the aircraft may change its course so as to seek safety even though such action may result in flying over Yugoslav territory without prior clearance.

Two unarmed American transport planes have been shot down by Yugoslav fighters. The first incident occurred on August 9th. The pilot of this plane was specifically instructed to fly over Klagenfurt to Udine via Tarvisio, carefully avoiding Yugoslav territory. The weather information available to this pilot was inaccurate and he encountered heavy clouds, icing and high winds on his route. When he emerged into clear weather he believed that his plane was northwest of Udine in Italy. Actually, while under instrument flight conditions he had drifted off his course into Yugoslavia. The plane was then approached by three Yugoslav fighters. These fighters made no signal which could be interpreted as a landing signal. They did wobble their wings which, according to United States practice is the accepted signal to attract attention to the plane making the signal. The

Yugoslav fighters then attacked without any warning whatsoever. The transport plane then descended rapidly in an effort to land but was fired on during the descent. After the plane landed the passengers and crew were held from August 9 to August 22 by the Yugoslav authorities. During this period the passengers and crew were questioned frequently and the Yugoslav questioners attempted to persuade individuals to delete from their statements any reference to the bad weather they had encountered and were asked to include statements as to the satisfactory care afforded. The foregoing statements are taken from the report of the pilot and crew of the plane made after their release by Yugoslav authorities.

On August 19 an unarmed American transport aircraft left Vienna for Italy. In accordance with standard practice, the pilot was carefully instructed as to his route. These instructions included a directive to avoid Yugoslavia. It is impossible to give complete information as to what occurred on this flight. The pilot and crew of this unarmed American transport are dead, shot down by Yugoslav armed aircraft.

The Yugoslav Government has already received assurances from the United States Government that the United States planes will not cross Yugoslav territory without prior clearance from Yugoslav authorities except when forced to do so by circumstances over which there is no control such as bad weather, loss of direction, and mechanical trouble. Assurances along these lines were repeated in the note which the American Ambassador gave the Yugoslav Government on August 21, 1946. Standing orders in this sense governing the activities of American planes have been enforced throughout the period referred to in the several recent notes from the Yugoslav Government alleging violations of Yugoslav territory by American planes. These orders have, in fact, been carried out at all American air stations in central, southern and eastern Europe from which American planes fly in the vicinity of Yugoslavia, and will continue to be carried out in the future.

I do not believe that it would serve a useful purpose for me to add to the views which were expressed in the note which the Acting Secretary of State handed you on August 21 last in regard to the action of the Yugoslav Government in shooting down the two American transport planes on August 9 and August 19. Marshall Tito in his conversation with Ambassador Patterson on August 22 expressed his regret at the loss of American lives. I have noted the efforts of the Yugoslav authorities in the search

for the bodies of the five crew members and the honors shown the remains which were recovered. Marshall Tito further informed Ambassador Patterson of his order recited in your note of August 30 that Yugoslav planes should not fire on planes that might fly over Yugoslav territory.

The Yugoslav Government has released the crew and passengers of the transport plane which was forced down on August 9 with the exception of the wounded Turkish officer who was a passenger on the plane and is still in the hospital. I have been informed that the Yugoslav Government has advised the Turkish authorities that this Turkish officer is free to leave Yugoslavia when he is able to travel and that your Government has expressed its regrets concerning his injury.

The United States Government was glad to receive the assurances contained in Marshall Tito's note dated August 31st to Ambassador Patterson. The full text of that note reads as follows: . . .

[The text of the Yugoslav note to the American Ambassador in Belgrade of 31 August 1946 is reproduced in full.]

With reference to Marshall Tito's proposal for an agreement on signals, United States military representatives would welcome a discussion of this question and are prepared to meet Yugoslav military representatives at such time and place as your Government may designate, in order to reach an agreement regarding the signals to be employed.

I am constrained to advise you that the United States Government has confidently expected that expressions of Yugoslav regrets respecting the loss of members of the crew, who were killed as a consequence of the action of Yugoslav armed forces, would be accompanied by an offer to make suitable indemnification to the families and dependents of the unfortunate victims of such Yugoslav action. My Government expects that such indemnification will be made by the Yugoslav Government, as well as compensation for the destruction of and damage to the United States planes and other property caused by the two Yugoslav attacks.

Accept [etc.]

William L. Clayton,
Acting Secretary.

f. United States Department of State Press Release, 9 October 1946

(15 Department of State Bulletin, p. 725.)

Upon instructions from the Department of State, the Ameri-

can Ambassador to Yugoslavia on October 8 delivered a note to the Yugoslav Government acknowledging the receipt of $150,000 as indemnity for the lives of the five American aviators who were killed when their unarmed transport plane was shot down over Yugoslavia on August 19. The note further stated that, in compliance with the request of the Yugoslav Government, the United States Government would distribute this sum in five equal payments of $30,000 each to the families of the deceased. The note added, however, that the United States Government could not accept the Yugoslav contention that the Yugoslav Government has no responsibility for the loss of the unarmed transports shot down on August 9 and 19, that these planes did not fly over Yugoslavia illegally but for reasons beyond their control resulting from adverse weather conditions and that therefore the United States Government must ask the Yugoslav Government to reconsider its refusal to make compensation for the loss of the two aircraft.

V. DECLARATIONS CONCERNING ANTARCTIC TERRITORIES

NOTE. Since 1908, several States have claimed sovereignty over parts of the Antartic Continent, on the basis of discovery, of exploration, of propinquity, or of the sector principle. For a discussion of the legal problems involved, see Naval War College, International Law Situations, 1937, pp. 67–131; Naval War College, Jurisdiction over Polar Areas (1937). The United States has made no such claims; it has not recognized the claims made by other States, and as occasion has arisen it has reserved its rights. The only area in Antartica to which no official claim has yet been made is the sector between 90° and 150° west longitude; this sector has been explored by American nationals, who have made unofficial claims on behalf of the United States.

In addition to the States whose declarations are set out below, other States have shown interest in Antarctica; mention may be made of the Belgian expedition in 1898–99, the Swedish expedition in 1902, and the German expeditions in 1901–03 and 1938–39. The later German expedition made an unofficial claim to approximately 230,000 square miles of territory lying within the area previously claimed by Norway (V. Stefansson, "Exploration and Discovery," Encyclopedia Britannica Yearbook, 1940, p. 272). A resolution of the All-Union Geographical Society of the Soviet Union of 11 February 1949 alluded to the expedition of Fabian von Bellingshausen, a Russian who circumnavigated Antarctica in 1819–1920, and stated that the Soviet Union has an incontrovertible right to participate in the settlement of Antarctic questions (New York Times, 12 February 1949, p. 7).

1. Argentine Republic

NOTE. In 1904 the Argentine Republic took control of a meterorological observatory in the South Orkneys, within the area claimed by Great Britain as the Falkland Islands Dependencies. In 1925 the Argentine Government built a wireless station in the South Orkneys, and notified the International Bureau of the Telegraphic Union of its establishment; protests were made by the British Ambassador at Buenos Aires in notes of 24 July 1925 and 8 September 1927. Replies by the Argentine Ministry of Foreign Relations and Worship of 30 November 1925 and 15 December 1927 asserted Argentine sovereignty over the Islands, based on continuous and effective occupation. Argentine Republic, *Memoria del Ministerio de Relacianes Exteriores y Culto*, 1927, pp. 83–85.

By a note of 14 September 1927, translated below, the Argentine General Director of Posts and Telegraphs notified the Director of the Universal Postal Union that Argentine territorial sovereignty extended to "the archipelagos of Los Estados, Año Nuevo, South Georgia, and the South Orkneys, and to polar territories which have not been delimited." Protest was made by the British Government on 17 December 1927. Argentine Republic *Memoria del Minsterio de Relaciones Exteriores y Culto*, 1927, pp. 85–88. Unofficial Argentine sources have claimed the sector between 20° and 68° west longitude (V. Stefansson, "Exploration and Discovery," Encyclopedia Britannica Yearbook, 1940, p. 271).

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A National Commission of the Antarctic, created by a presidential decree of 15 July 1939, was given a permanent character by a presidential decree of 30 April 1940. On 5 June 1940 the Commission submitted to the Minister of Foreign Relations an extensive report dealing with explorations of the Antarctic region, its geological, geographical, and economic aspects, Argentine rights there, and a program to be carried out by the national authorities. Argentine Republic, *Memoria del Ministerio de Relaciones Exteriores y Culto*, 1939–1940, I, p. 482.

Apparently the first definite official Argentine pronouncemnt on the boundaries of its claim was in a note of 3 June 1946 to the Government of the United Kingdom, translated below, which referred to the Argentine Republic's "indisputable right to the lands situated south of the 60th parallel between the meridans of 25° and 68°34′ of west longitude." On 12 March 1947 the National Commission of the Antarctic issued a publication in which the Argentine sector is described as "that situated between the 25th and 74th meridans of longitude west of Greenwich, to the south of 60° south latitude" (Argentine Republic, *Boletín del Ministerio de Relaciones Exteriores y Culto*, March 1947, p. 103). An official map published by the Military Geographic Institute in 1947 also shows the sector south of 60° south latitude between 25° and 74° west longitude as Argentine (*ibid.*, January 1948, p. 155; Argentine News, January-February-March 1947.)

A Chilean decree of 6 November 1940 proclaiming sovereignty over the Antarctic led to negotiations between the Argentine Republic and Chile.

A. The Director of Argentine Posts and Telegraphs to the Director of the Universal Postal Union, 14 September 1927

(Argentine Republic, *Memoria del Ministerio de Relaciones Exteriores y Culto*, 1927, p. 88.)

[Translation]

Buenos Aires, *14 September 1927.*

Mr. Director: With reference to your circular letter number 2.122/53 of last 22 March concerning a request for information concerning the territorial jurisdiction of each administration of the Postal Union, I have the honor to request you to inform the various offices of the Postal Union that Argentine territorial jurisdiction extends *de jure* and *de facto* to the continental area, to the territorial sea and the islands situated along the maritime coast, to a part of the Island of Tierra del Fuego, to the archipelagos of Los Estados, Año Nuevo,[1] South Georgia, and South Orkneys, and to polar territories which have not been delimited.

De jure, the Archipelago of the Malvinas [Falklands] also belongs to this jurisdiction, but it cannot be exercised *de facto* because of the occupation maintained by Great Britain.

Please accept, Mr. Director, the assurances of my high consideration.

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[1] These islands lie off the coast of Tierra del Fuego. [Ed.]

For the Director General, the Chief of the International Service:

Luis M. Camusi.

b. Presidential Decree, 30 April 1940

(Decree No. 61.852, *Boletin Oficial*, 8 November 1941, p. 2.)

[Translation]

Whereas this Government on last 15 July issued Decree No. 53.821, creating a Commission composed of representatives of the Ministries of Foreign Relations and Worship, of the Navy, and of Agriculture, with the object of assuring an adequate participation of the Republic in the International Polar Exposition and in the Congress of Arctic Explorers convoked by the Government of Norway for October of this year; and

Whereas later the inviting Government made it known that the aforesaid meetings had been postponed *sine die*, and

Considering:

That the work done by the Commission has clearly shown it to be desirable that an organization of permanent activity, with members of a stable character, should centralize and take into its charge the consideration of the giving of advice concerning all matters which require the protection and development of national interests in the Antarctic Zone and the Antarctic Continent, and

With attention to the information communicated by the Department of Foreign Relations and Worship, of the Navy, and of Agriculture,

The President of the Argentine Nation, in a General Accord of Ministers

decrees:

Article 1. A National Commission of the Antarctic, which will centralize and take in charge the consideration of and giving of advice concerning all matters relative to the protection and development of Argentine interests in the Antarctic, shall be created with permanent character and shall be dependent upon the Ministry of Foreign Relations and Worship.

Article 2. The Commission will continue the studies of overall character which it has undertaken concerning the present state of the problems of the Antarctic and their connection with Argentine interests, and will propose to the Executive Power a plan of action which will include all aspects of this matter, both of an internal and international order.

Article 3. The M nistries and Dependencies and the competent Institutes will directly assist the National Commission of the Antarctic with the documentation and advice which it requests of them for the better fulfillment of its task. . . .

Ortiz.—José María Canti o.—Diógenes Taboada.—Pedro Groppo.—Carlos D. Márques.—León L. Scasso.—Jorge E. Coll.—Luis A. Barberis.—Cosme Massini Ezcurra.

c. The Argentine Minister of Foreign Relations to the Chilean Ambassador, 12 November 1940

(Argentine Republic, *Memoria del Ministerio de Relaciones Exteriores y Culto*, 1940–1941, p. 407; Chile, *Memoria del Ministerio de Relaciones Exteriores y Comercio*, 1940, p. 443.)

[Translation]

Buenos Aires, *12 November 1940.*

Mr. Ambassador: This Ministry has taken cognizance, through the communication of its Chargé d'Affaires in Santiago, of the note verbale of the Ministry of Foreign Relations of Chile, dated the 6th instant, which contains information of the Decree of Your Excellency's Government of the same date, which determines the limits of Chilean territory in the Antarctic.

In thanking you for this communication, which has been the object of careful study, I wish to express to Your Excellency the satisfaction with which, at the same time, this Government learned, from the proposals formulated by the Minister of Foreign Relations of Chile to the Argentine representative contemplating the revision of these boundaries by means of a common examination of the question by both countries, that in establishing them there was no intention to violate Argentine rights.

The Argentine Republic has for a ong time recognized the importance which must be attached to the problem of the Antarctic and to the national interests bound up with it, which have materialized for the present in the well-known occupation which this Republic has exercised within the zone for the past thirty-seven years, by the maintenance of the Observatory of the [South] Orkneys. Thus, upon the creation on 15 July 1939 of the Antarctic Commission, which was given a permanent character by the Decree of 30 April 1940 "in order to give attention to matters which require the fostering and expediting of national interests in the Antarctic zone and continent," this Government could announce that—without taking account of divers expeditions made by its navy—"Argentina is the only country in the

world which maintains a permanent observatory in the antarctic regions, and the work of this observatory, which has augmented for more than thirty years, has come to be of inestimable value in the field of un versal science." By reason of this effective and continuous occupation which has gone on since 1904, the inhabited place which is nearest to the South Pole is Argentine, and our country is the only one "which has lived there for 37 years and the only one, consequently, which maintains in real form the rule of its sovereignty in the lands of the Antarctic."

Argentine rights, moreover, are not solely dependent upon the principal fact of this occupation. They are also justified under the subsidiary systems admitted for the attribution of those zones. By reason of the geographical propinquity of both the continental territory of Argentina and of the archipelago of the Malvinas [Falklands] which is also part of the national soil, it would be difficult for another nation to take the place of Argentina on the ground that it had better rights with respect to the attribution of the ownership of this zone. Argentina's title also could scarcely be disputed if the question is to be solved on the basis of the sector which is a prolongation of the American continent.

This same criterion was the basis of the observations made by the Argentine Government to the Government of His Britannic Majesty last September 11th, when this Government, by reason of a map of the Antarctic published by the Government of Australia, suggested the calling of an international conference for the determination of the legal and political status of that region. Moreover, on the occasion of a plan of collaboration suggested by the Government of the United States with respect to the voyage of Rear Admiral Byrd to the Antarctic zone, the Argentine Chancellery informed that Government by a note of last March 9th of the rights which our country claims in those regions.

As has already been made clear on the above-mentioned occasion, it is the opinion of the Argentine Government that the situation created by unilateral attributions of sectors in the Antarctic made by various States, among which Chile must now be ranked, can only reach a satisfactory international solution through the calling of a conference of the interested States and the agreement of all of them on the basis of their just rights and titles. In view of all the antecedents which support its own rights and titles, the Argentine Government could without doubt have justly issued a declaration of the same class, did it

not think that because such a declaration would be unilateral it would not have improved such rights and titles in any way. By this same criterion, the Argentine Government cannot witness the declaration which the Government of Chile has just formulated without making reservations, but certainly does not intend to deny the right of that friendly country to invoke rights over a sector of the zone in question.

Happily the suggestion with which the Chancellery of Chile followed its communication of its declaration, to the effect that the competent organs of the two countries should enter into contact to agree on a solution which would be agreeable to the aspirations of both, allows us, in accordance with the best tradition of our relations, to revise and fix by common accord the line which will separate our just claims. The Argentine Government accepts, therefore, the friendly suggestion of the Government of Chile, in the hope that the agreement which will be reached will also serve to strengthen the rights of the two countries against other competing nations.

Accept, Excellency, the expression of my highest and most distinguished consideration.

JULIO A. ROCA.

To His Excellency don Conrado Ríos Gallardo, Ambassador of Chile.

d. The Argentine Minister of Foreign Relations to the British Ambassador, 3 June 1946

(Argentine Republic, *Boletín del Ministerio de Relaciones Exteriores y Culto*, September 1946, pp. 16–18.)

[Translation]

BUENOS AIRES, *3 June 1946.*

MR. AMBASSADOR: This Ministry has just been informed by its Embassy in London that the Government of Great Britain has issued a new series of postage stamps of the Malvinas Islands [Falklands] and their geographical dependencies, which have been ordered to be on sale beginning 5 April of this year. The Argentine press has also recently published a reproduction of these stamps, in the part of whose design which corresponds to the Antarctic sector, between the 20° and 80° meridians, the [South] Georgias, [South] Orkneys, [South] Shetlands and other islands appear to be joined to the Malvinas.

Your Excellency's Government well knows that the Argentine Republic has never at any time surrendered the just right which supports its claim to a portion of territory of its own dominions—

the Falkland Islands—by virtue of geographical, historic, and juridical rights which it would be superfluous to set out in detail. To this is added its indisputable right to the lands situated south of the 60th parallel between the meridians of 25° and 68°34′ west longitude. It is especially fitting to recall, in this connection, among the representations which have been made, the formal reservation made in general terms by a note of September 1940 addressed to your diplomatic mission, with regard to the publication by the Commonwealth of Australia of a map of the Antarctic; the reservations made personally, in February 1943—confirmed by a written memorandum of the same month—by the then Minister of Foreign Relations to Your Excellency's predecessor, with respect to acts of possession carried out in these lands by British authorities; and finally the most recent reservation, made on 29 December 1945 by the undersigned, with respect to a note of your Embassy evoked by the declarations of an Argentine delegate in the San Francisco Conference. On each of these occasions the Argentine Government was able to take action appropriate to the situation which had been created and to protect fully its imprescriptible right.

In this last communication to Your Excellency's mission this Government stated that its permanent desire was to maintain unalterably with the Government of Great Britain the traditional good relations of friendship which have always existed between the two countries. But it also has an inescapable obligation to safeguard, whenever the situation requires, indisputable rights over portions of its territorial patrimony, by formulating the appropriate reservations. And under these circumstances and within these limits I now repeat this statement to Your Excellency with reference to the issue of the above-mentioned postage stamps.

At the same time it is my duty to inform Your Excellency that the Argentine Government has taken steps to inform the Universal Postal Union, as it did in 1943 on the occasion of the issue of British stamps commemorating the centenary of the occupation of the Malvinas, that correspondence coming to the Republic which bears these stamps will be considered as lacking postage, and the appropriate sanctions will be applied to it.

I repeat to Your Excellency in this regard the assurances of my most distinguished consideration.

JUAN I. COOKE.

To His Excellency the Ambassador Extraordinary and Plenipotentiary of Great Britain, Sir Reginald Leeper.

2. Chile

NOTE. The presidential decree of 6 November 1940 was communicated to the Governments of the Argentine Republic, the United States, and Japan. The Argentine Republic made a reservation of its rights in the note of 12 November 1940, leading to the negotiations described in section 3, *post*. The Japanese Government also made a reservation of its rights in a note of 13 November 1940; the Chilean Government in a note of 29 November 1940, translated below, refused to accept this reservation. The reply of the United States has not been published.

A. PRESIDENTIAL DECREE, 6 NOVEMBER 1940

(Decree No. 1747, 109 *Boletín de Leyes y Decretos del Gobierno*, p. 2440 (1940); *Memoria del Ministerio de Relaciones Exteriores y Comercio*, 1940, p. 440.)

[Translation]

Considering:

That it is the duty of the State to fix its boundaries with precision;

That up to the present the boundaries of Chilean territory in the direction that it is prolonged into the polar region called the American Antarctic have not been made precise;

That this Ministry gave public notice in 1906 that the delimitation of the above-mentioned territory was the subject of studies which had been begun, but which were not yet completed;

That the present state of such studies permits a determination to be made with respect to this matter;

That the Special Commission named by Decree No. 1541 of 7 September 1939, of this Ministry has established the boundaries of the Chilean Antarctic territory in conformity with the date furnished by the geographical, historical, juridical, and diplomatic antecedents which have been compared and which have been accumulated up to the present.

DEGREES:

The Chilean Antarctic or Chilean Antarctic Territory is formed by all lands, islands, islets, reefs, pack-ice, etc., known and to be discovered, and their respective territorial seas, lying within the limit of the sector constituted by the meridians of 53° longitude west of Greenwich and 90° west of Greenwich.

This decree shall be registered, communicated, published, and inserted in the Bulletin of the Laws and Decrees of the Government.—AGUIRRE CERDA.—Marcial Mora M.

B. The Chilean Ministry of Foreign Relations to the Japanese Legation, 29 November 1940

(Chile, *Memoria del Ministerio de Relaciones Exteriores y Comercio*, 1940, p. 450.)

[Translation]

The Ministry of Foreign Relations and Commerce presents its compliments to the Legation of Japan and has the honor to acknowledge receipt of the note verbale of the 13th instant, by which the Legation in accordance with instructions received from its Government notifies this Ministry, with respect to Decree No. 1747 of the 6th instant, which fixed the limits of the Chilean Antarctic, "that Japan considers itself one of the countries which have an interest and rights in the said zone, for which reason it reserves the right to assert its point of view in this matter."

In reply, the Ministry of Foreign Relations and Commerce thinks it necessary to state the following:

The Government of Chile, which is animated by the most cordial intentions toward the Japanese Government, regrets that it cannot accept the reservation of rights formulated by the Japanese Government with respect to territories which are situated in the American Hemisphere, and which belong to our country geographically and by virtue of historic rights and notorious acts of possession.

Moreover it is clearly established that the aforementioned Decree did not assert our claims to zones which could be considered "res nullius," but rather marked a frontier line in definitely Chilean lands and seas whose boundaries were till then undetermined with respect to regions to which the Argentine Republic could claim title by virtue of its propinquity on the eastern side, and to which the United States could calim title to the West.

The Government of Chile believes that the western meridian of the triangle which encloses its antarctic territories, which is 90° longitude west of Greenwich, can in no case interfere with lands or seas in which Japan has exercised or at present exercises jurisdiction.

As to the eastern meridian of the above-mentioned triangle, which is 53° longitude west of Greenwich, it is contiguous with possessions of the Argentine Republic.

Consequently the Government of Chile cannot discern on what basis the Government of Japan reserves its irghts in a

triangle which, starting with seas and lands which belong to the Republic of Chile, terminates with its vertex at the South Pole; which is situated within the American Antarctic; which comprises regions possessed by Chile since long ago; and which borders to the east and west on zones occupied by Argentina and by the United States.

In virtue of the foregoing considerations, the Government of Chile entertains the hope that the Government of Japan will recognize the justice which supports us and will not insist on its reservation.

The Ministry of Foreign Relations and Commerce takes this occasion to reiterate to the Legation of Japan the assurances of its distinguished consideration.

SANTIAGO, *29 November 1940.*

3. Chile and the Argentine Republic

NOTE. By a presidential decree of 6 November 1940, translated *ante*, Chile proclaimed its sovereignty over a sector of the Antarctic. By a note of 12 November 1940, also translated above, the Argentine Minister of Foreign Relations and Worship expressed the reservations of his government with respect to the Chilean decree, but accepted Chilean proposals for negotiation. These negotiations were without substantial result until on 12 July 1947 a joint declaration on the Antarctic was signed at Buenos Aires by the Ministers of Foreign Relations of the two countries. Further negotiations led to the signing on 4 March 1948 at Santiago de Chile of another joint declaration on the Antarctic; the treaty of demarcation of boundaries envisaged has yet been concluded.

A. JOINT DECLARATION ON THE ANTARCTIC, BUENOS AIRES, 12 JULY 1947

(Argentine Republic, *Boletín del Ministerio de Relaciones Exteriores y Culto*, January 1948, p. 156.)

[Translation]

The Ministers of Foreign Relations of the Argentine Republic and of Chile, having met at Buenos Aires, and animated by the intention to initiate a friendly policy for the determination of the frontier of both States in the Antarctic region, have agreed to declare, convinced as they are of the indisputable rights of sovereignty of the Argentine Republic and of Chile over the South American Antarctic, that they favor the realization of a harmonious plan of action of both governments for the purpose of securing better scientific knowledge of the Antarctic Zone by means of explorations and technical studies; and that, in the same way, they consider appropriate a common effort in matters relating to the utilization of the wealth of this region, and that it is their desire to arrive at agreement as soon as possible on

an Argentine-Chilean treaty of demarcation of boundaries in the South American Antarctic.

In faith whereof they have signed the present declaration in two originals in the City of Buenos Aires on the twelfth day of the month of July, one thousand nine hundred and forty-seven.

B. Joint Declaration on the Antarctic, Santiago de Chile, 4 March 1948

(Argentine Republic, *Boletín del Ministerio de Relaciones Exteriores y Culto*, March 1948, p. 11.)

[Translation]

Having met in Santiago de Chile in the Ministry of Foreign Relations, the Minister of that department, Senor German Vergara Donoso, and the Ambassador Extraordinary and Plenipotentiary of the Argentine Republic, Doctor Pascual La Rosa, have agreed to state in the present joint declaration the result of the conversations which have taken place with respect to the South American Antarctic, in conformity with what had previously been agreed upon by their respective Governments and with the joint declaration of 12 July 1947.

Until a friendly agreement is concluded concerning the common boundary line of the Antarctic territories of Chile and the Argentine Republic, in the names of their respective Governments Señores Vergara Donoso and La Rosa declare:

First: That both Governments will act in common accord in the juridical protection and defense of their rights in the South American Antarctic, which is included between the 25th and 90th meridians of longitude west of Greenwich, and in these territories Chile and the Argentine Republic mutually recognize isdisputable rights of sovereignty.

Second: That they are in agreement to continue their action of administration, exploitation, supervision, and development in the undefined frontier region of their respective Antarctic zones, in a spirit of reciprocal cooperation.

Third: That as soon as possible and in any event in the course of the present year they will carry on negotiations until they arrive at agreement on a Chilean-Argentine treaty of demarcation of boundaries in the South American Antarctic.

Done at Santiago, in two originals, on the fourth day of March, one thousand nine hundred and forty-eight.

Vergara Donoso.
Pascual La Rosa.

4. French Republic

A. Presidential Decree, 27 March 1924

(*Journal Officiel.* 29 March 1924, p. 3004.)

[Translation]

The President of the French Republic, in view of Article 18 of the senatus-consult of 3 May 1854, on the proposal of the Minister of Colonies,

DECREES:

Article 1. In the Crozet Archipelago and Adélie or Wilkes Land, mining rights, the right of hunting, and the right of fishing in territorial waters are reserved to French citizens.

Article 2. Land establishments, the installation of floating factories in territorial waters, the exploitation of factories, and every concession of any nature whatever must be the object of a decree issued on the proposal of the Minister of Colonies.

Article 3. The details of the application of the dispositions of the present decree will be the object of later regulations.

Article 4. The Minister of Colonies is charged with the execution of the present decree.

Done at Paris, 27 March 1924. A. Millerand.

By the President of the Republic:

The Minister of Colonies,

A. Sarraut.

B. Report of the Minister of Colonies, 21 November 1924

(*Journal Officiel*, 27 November 1924, p. 10452.)

[Translation]

Paris, *21 November 1924.*

Mr. President: I have the honor of submitting for your approval a draft decree which administratively attaches Saint Paul and Amsterdam Islands, the Kerguelen and Crozet Archipelagos, and Adélie Land to the Government General of Madagascar.

These far-off parts of our colonial domain have not up to the present been the object of any premanent administrative organization. In the ignorance which long prevailed of the economic value of these uninhabited lands, situated apart from the great maritime routes, it did not appear indispensable, in truth, to confirm by the establishment of an effective authority the rights of sovereignty which France had long ago acquired over the archipelagos and the parts of the antarctic continent which were discovered by our navigators.

Scientific missions carried out at the beginning of this century in the southern seas have shown that these long-neglected dependencies of our overseas dominions could offer extremely precious resources to the heavy fishing industry; whales, seals, and sea-elephants are very abundant in those localities, and the great industrial value of the products furnished by those species of animals soon brought about the creation of fishing and hunting enterprises whose first seasons were extremely fruitful.

With a view to exercising the effective and continuous control which is necessary over the exploitation of these national riches, it appears necessary to provide for the administrative organization of these southern islands and lands, and to envisage, for this purpose, their attachment to an already established colonial government; and that of Madagascar appeared to me to be naturally designated, by reason of the geographical situation of that colony and of the means of action which it possesses, to assure the sovereign authority of France over this part of our colonial domain. The Governor General of Madagascar, when consulted concerning the principle of this attachment, declared that he favored this measure and has recently informed my department that he has decided to enter an initial credit in the budget of the colony, representing the participation of Madagascar in the expenses of the organization of these new dependencies of the Great Island.

In these conditions, I have the honor to request you, Mr. President, to sign the attached draft decree, which places Saint Paul and Amsterdam Islands, the Kerguelen and Crozet Archipelagos, and Adélie Land under the authority of the Governor General of Madagascar and confides to this high functionary the task of organizing, under the control of my department, the effective administration of these territories.

Please accept, Mr. President, the assurance of my profound respect.

The Minister of Colonies,
Daladier.

c. Presidential Decree, 21 November 1924

(*Journal Officiel*, 27 November 1924, p. 10452.)

[Translation]

The President of the French Republic, in view of the senatus-consult of 3 May 1854; on the report of the Minister of Colonies,

DECREES:

Article 1. Saint Paul and Amsterdam Islands, the Kerguelen and Crozet Archipelagos, and Adélie Land are attached

to the Government General of Madagascar and constitute one of the administrative dependencies of that colony.

Article 2. Orders of the Governor General of Madagascar submitted to the apporval of the Ministry of Colonies will fix the conditions of application of the present decree.

Article 3. The Minister of Colonies is responsible for the execution of the present decree, which will be published in the *Journaux Officiels* of the French Republic and of the Colony of Madagascar and will be inserted in the *Bulletin des lois* and the *Bulletin Officiel* of the Ministry of Colonies.

Done at Paris, 21 November 1924.

Gaston Doumergue.

By the President of the Republic:
The Minister of Colonies,
Daladier.

d. Presidential Decree, 1 April 1938 [2]

[*Journal Officiel*, 6 April 1938, p. 4098.)

[Translation]

Limits of French Territories in the Antarctic Region called "Adélie Land."

The President of the French Republic,

In view of the senatus-consult of 3 May 1854;

In view of the decree of 21 November 1924 attaching Saint Paul and Amsterdam Islands, the Kerguelen and Crozet Archipelagos, and Adélie Land to the Government General of Madagascar;

On the report of the Minister of Foreign Affairs and the Minister of Colonies,

DECREES:

Article 1. The islands and territories situated south of the 60-degree parallel of south latitude and between the 136-degree

[2] The title given to this decree in the *Journal Officiel* was *Limites des territoires francais de la région antartique dite "Terre Adelie."* The text of the decree was communicated to the United States, which in its reply declined to admit that sovereignty accrues from mere discovery. 1 Hackworth, Digest of International Law, p. 460. By an exchange of notes of 25 October 1938, with the United Kingdom, Australia and New Zealand, France recognized the free right of passage of British Commonwealth aircraft over Adélie Land on the understanding that reciprocal rights would be accorded to French aircraft over British Commonwealth territories in the Antarctic. British Treaty Series, No. 73 (1938). Informed of this exchange of notes, the United States reserved its rights. 1 Hackworth, *op.cit.*, p. 459.

and 142-degree meridians of longitude east of Greenwich are under French sovereignty.

Article 2. The Minister of Foreign Affairs and the Minister of Colonies are charged, each as to what concerns him, with the execution of the present decree, which will be published in the *Journal Officiel* of the French Republic, in the *Journal Officiel* of the Colony of Madagascar, and inserted in the *Bulletin Officiel* of the industry of colonies.

Paris, 1 April 1938.

Albert Lebrun.

By the President of the Republic:
The Minister of Foreign Affairs,
Paul-Boncour.
The Minister of Colonies,
Marius Moutet.

5. Great Britain: Falkland Islands Dependencies[3]

a. Letters Patent, 21 July 1908

(Statutory Rules and Orders, 1908, p. 1042.)

Edward the Seventh, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India: To all to whom these Presents shall come, Greeting.

Whereas the groups of islands known as South Georgia, the South Orkneys, the South Shetlands, and the Sandwich Islands, and the territory known as Graham's Land, situated in the South Atlantic Ocean to the south of the fiftieth parallel of south latitude, and lying between the twentieth and the eightieth degrees of west longitude, are part of Our Dominions, and it is expedient that provision should be made for their government as Dependencies of Our Colony of the Falkland Islands.

I. Now We do hereby declare that from and after the publication of these Our Letters Patent in the Government Gazette of Our Colony of the Falkland Islands the said groups of islands known as South Georgia, the South Orkneys, the South Shetlands, and the Sandwich Islands, and the said territory of

[3] Claims to South Georgia, to the South Orkneys, and to other polar territories included in the Falkland Island Dependencies, were advanced by the Argentine Republic in 1925 and 1927. Argentine Republic, *Memoria del Ministerio de Relaciones Exteriores y Culto*, 1927, pp. 83–88.

Graham's Land shall become Dependencies of Our said Colony of the Falkland Islands.

II. And We do hereby further declare that from and after such publication as aforesaid the Governor and Commander-in-Chief of Our Colony of the Falkland Islands for the time being (herein-after called the Governor) shall be the Governor of South Georgia, the South Orkneys, the South Shetlands, and the Sandwich Islands, and the territory of Graham's Land (all of which are herein-after called the Dependencies); and We do hereby vest in him all such powers of government and legislation in and over the Dependencies as are from time to time vested in Our said Governor in and over Our Colony of the Falkland Islands, subject, nevertheless, to any instructions which may from time to time be hereafter given him under Our Sign Manual and Signet, or through one of Our Principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the said Dependencies.

III. In the event of the death or incapacity of the Governor, or in the event of his absence from Our Colony of the Falkland Islands otherwise than for the purpose of visiting the Dependencies, the Officer for the time being Administering the Government of Our said Colony shall be Governor for the time being of the Dependencies.

IV. There shall be an Executive Council for the Dependencies, and the said Council shall consist of such persons as shall from time to time constitute the Executive Council of Our Colony of the Falkland Islands; and the said Council shall exercise the same functions in regard to all matters arising in connexion with the Dependencies as are exercised by the Executive Council of Our Colony of the Falkland Islands in regard to matters arising in connexion with Our said Colony

V. It shall be, and shall be deemed always to have been, competent for the Governor, by and with the advice and consent of the Legislative Council of Our Colony of the Falkland Islands, to make laws for the peace, order, and good government of the Dependencies.

VI. The Governor is and shall be deemed always to have been authorised and empowered to make and execute, in Our name and on Our behalf, grants and dispositions of any Lands which may lawfully be granted or disposed of by Us within the Dependencies, either in conformity with Instructions under Our Sign Manual and Signet, or through one of Our Principal

Secretaries of State, or in conformity with such laws as may from time to time be in force in the Dependencies.

VII. We do hereby reserve to Us, Our Heirs and Successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us or Them shall seem meet.

VIII. The Governor shall cause these Our Letters Patent to be published in the Government Gazette of Our Colony of the Falkland Islands, and the same shall thereupon come into force.[4]

In witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster, this Twenty-first day of July, in the Eighth year of Our Reign.

By Warrant under the King's Sign Manual.

MUIR MACKENZIE.

B. LETTERS PATENT, 28 MARCH 1917

(Statutory Rules and Orders, 1917, p. 1135.)

George the Fifth by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India: To all to whom these Presents shall come, Greeting.

Whereas doubts have arisen as to the limits of the groups of islands known as South Georgia, the South Orkneys, the South Shetlands, and the Sandwich Islands, and the territory of Graham Land otherwise known as Graham's Land; and whereas it is expedient that provision should be made for the government, not only of these islands and territory but also of certain other Our islands and territories adjacent thereto as Dependencies of Our Colony of the Falkland Islands:

[4] These Letters Patent were published in the Falkland Islands Gazette of 1 September 1908.

I. Now We do hereby declare that from and after the publication of these Our Letters Patent in the Government Gazette of Our Colony of the Falkland Islands, the Dependencies of Our said Colony shall be deemed to include and to have included all islands and territories whatsoever between the 20th degree of West longitude and the 50th degree of West longitude which are situated south of the 50th parallel of South latitude; and all islands and territories whatsoever between the 50th degree of West longitude and the 80th degree of West longitude which are situated south of the 58th parallel of South latitude.

II. And We do hereby vest in the Governor and Commander-in-Chief of Our Colony of the Falkland Islands all such powers and authorities in and over the lands hereby included in the Dependencies of Our said Colony as are exercised by him over the Dependencies in virtue of certain Letters Patent bearing date at Westminster the Twenty-first day of July, 1908.

III. We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter or amend these Our Letters Patent as to Us or them shall seem meet.

IV. The Governor shall cause these Our Letters Patent to be published in the Government Gazette of Our Colony of the Falkland Islands and the same shall thereupon come into force.[5]

In witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster the Twenty-eight day of March in the Seventh Year of Our Reign.

By Warrant under the King's Sign Manual.

SCHUSTER.

6. Great Britain: Ross Dependency

NOTE. The Byrd expeditions of 1928 and 1933 operated from a base within the area claimed as the Ross Dependency. In reply to a protest to various acts of the expedition, made by the British Ambassador in Washington, in a note of 29 January 1934, the Secretary of State of the United States reserved all rights which the United States or its citizens might have with respect to the matter, and said:

"It is understood that His Majesty's Government in New Zealand bases its claim of sovereignty on the discovery of a portion of the region in question. . . . In the light of long established principles of international law, . . . I cannot admit that sovereignty accrues from mere discovery unaccompanied by occupancy and use" (1 Hackworth, Digest of International Law, p. 457).

The British Ambassador in a reply of 27 December 1934 stated that the British claim to sovereignty was not based on discovery alone, and continued:

"The [Ross] Dependency was established and placed under New Zealand Adminstration by an Order in Council of 1923 in which the Dependency's geographical limits were precisely defined. Regulations have been made by the Governor General of New Zealand in respect to the Dependency and the British title has been kept up by the exercise in respect of the Dependency of administrative and governmental powers, e.g. as regards the issue of whaling licences and the appointment of a special officer to act as magistrate for the Dependency" [*ibid.*, p. 458].

Replying by a note of 7 February 1935, the United States again reserved the rights which it or its citizens might have [*ibid.*, p. 458].

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[5] These Letters Patent were published in the Falkland Islands Gazette of 2 July 1917.

Order in Council, 30 July 1923

(Statutory Rules and Orders, 1923, p. 712.)

At the Court at Buckingham Palace, the 30th day of July, 1923.

Present,

The King's Most Excellent Majesty.

Lord President. Secretary Sir Samuel Hoare.
Lord Chamberlain. Major George Tryon.

Whereas by the British Settlements Act, 1887, it is, amongst other things, enacted that it shall be lawful for His Majesty in Council from time to time to establish all such laws and institutions and constitute such courts and officers as may appear to His Majesty in Council to be necessary for the peace, order and good government of His Majesty's subjects and others within any British settlement:

And whereas the coasts of the Ross Sea, with the islands and territories adjacent thereto, between the 160th degree of East Longitude and the 150th degree of West Longitude, which are situated south of the 60th degree of South Latitude, are a British settlement within the meaning of the said Act:

And whereas it is expedient that provision should be made for the government thereof:

Now, therefore, His Majesty, by virtue and in exercise of the powers by the said Act, or otherwise, in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

I. From and after the publication of this Order in the Government Gazette of the Dominion of New Zealand [6] that part of His Majesty's Dominions in the Antartic Seas, which comprises all the islands and territories between the 160th degree of East Longitude and the 150th degree of West Longitude which are situated south of the 60th degree of South Latitude shall be named the Ross Dependency.

II. From and after such publication as aforesaid the Governor-General and Commanders-in-Chief of the Dominion of New Zealand for the time being (hereinafter called the Governor) shall be the Governor of the Ross Dependency; and all the powers and authorities which by this Order are given and granted to the Governor for the time being of the Ross Dependency are hereby vested in him.

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[6] This Order in Council was published in the New Zealand Gazette of 16 August 1923.

III. In the event of the death or incapacity of the said Governor-General and Commander-in-Chief of the Dominion of New Zealand or in the event of his absence from the said Dominion, the Officer for the time being administering the government of the Dominion shall be Governor for the time being of the Ross Dependency.

IV. The said Governor is further authorised and empowered to make all such Rules and Regulations as may lawfully be made by His Majesty's authority for the peace, order and good government of the said Dependency, subject, nevertheless, to any instructions which he may from time to time receive from His Majesty or through a Secretary of State.

V. The Governor is authorised to make and execute, on His Majesty's behalf, grants and dispositions of any Lands which may lawfully be granted or disposed of by His Majesty within the said Dependency, in conformity with such Rules and Regulations as may from time to time be in force in the Dependency.

M. P. A. Hankey.

7. Great Britain: Australian Antarctic Territory

Order in Council, 7 February 1933

(Statutory Rules and Orders, 1933, p. 2089.)

At the Court at Sandringham, the 7th day of February, 1933.

Present,

The King's Most Excellent Majesty.

Lord President. Mr. Chancellor of the
Earl Stanhope. Duchy of Lancaster.

Whereas that part of the territory in the Antartic Seas which comprises all the islands and territories other than Adélie Land situated south of the 60th degree of South Latitude and lying between the 160th degree of East Longitude and the 45th degree of East Longitude is territory over which His Majesty has sovereign rights:

And whereas by the Commonwealth of Australia Constitution Act, it is provided that the Parliament of the Commonwealth of Australia may make laws for the government of any territory placed by the King under the authority of and accepted by the Commonwealth:

And whereas it is expedient that the said territory in the Antarctic Seas should be placed under the authority of the Commonwealth of Australia:

Now, therefore, His Majesty, by virtue and in exercise of the power in that behalf in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. That part of His Majesty's dominions in the Antartic Seas which comprises all the islands and territories other than Adélie Land which are situated south of the 60th degree of South Latitude and lying between the 160th degree of East Longitude and the 45th degree of East Longitude is hereby placed under the authority of the Commonwealth of Australia.

2. This Order shall come into operation on such date, after legislation shall have been passed by the Parliament of the Commonwealth of Australia providing for the acceptance of the said territory and the government thereof, as may be fixed by Proclamation by the Governor-General of the Commonwealth of Australia.[7]

M. P. A. Hankey.

8. Great Britain: Other Antarctic Claims[8]

Summary of Proceedings of the Imperial Conference, 1926 (excerpt)

(Summary of Proceedings, Cmd. 2768, p. 33.)

XI. British policy in the antarctic

The question of Antarctic exploration was discussed between representatives of the Governments interested. There are certain areas in these regions to which a British title already exists by virtue of discovery. These areas include:

(i) The outlying part of Coats Land, viz., the portion not comprised within the Falkland Islands Dependencies.

(ii) Enderby Land.

(iii) Kemp Land.

(iv) Queen Mary Land.

(v) The area which lies to the west of Adélie Land and which on its discovery by the Australian Antarctic Expedition in 1912 was denominated Wilkes Land.

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[7] The Australian Parliament on 13 June 1933 passed an act providing for the acceptance of the territory [Australia, Commonwealth Acts (1933), p. 12], and the Order in Council was brought into force on 24 August 1936 by a Proclamation of the Governor-General of that date [Australia, Commonwealth Statutory Rules (1936), p. 599].

[8] Of the areas herein claimed, only the outlying parts of Coats Land is not included in the scope of the letters patent and orders in council herein reproduced.

(vi) King George V Land.

(vii) Oates Land.

The representatives of the Governments concerned studied the information available concerning these areas with special reference to their possible utilisation for further developing exploration and scientific research in the Antarctic regions.

9. Norway: Bouvet Island

Note. In 1911 Captain Roald Amundsen, the first explorer to reach the South Pole purported to take possession of the area in the name of the King of Norway, but this claim has not been followed by any official action on the part of the Norwegian Government.

The first official Norwegian assertion of sovereignty with respect to lands in the far South was a royal decree of 23 January 1928 concerning Bouvet Island, (3°24′ E. long., 54°26′ S. lat.), sanctioning a proposal by the Ministry of Foreign Affairs of the same date which requested

"1. That Your Majesty will confirm and approve that Bouvet Island in the Island in the Southern Atlantic Ocean has been taken into formal possession in Your Majesty's name and that the Island is thus laid under Norwegian Sovereignty.

"2 That the Ministry of Justice be authorized to issue regulations regarding the police authority on the Island" (Norway Collection of Laws & c., 1926–1930, p. 343).

The British Government when informed of this decree at first took the position that a valid British title to Bouvet Island existed as the result of a landing and taking of possession in 1825 by the captain of a British sealer, but finally waived its claim in favor of Norway (1 Hackworth, Digest of International Law, pp. 469–470).

By a note of 12 December 1928 the Norwegian Minister in Washington informed the United States Secretary of State that Bouvet Island had been placed under Norwegian sovereignty. The Secretary of War and the Secretary of the Navy, when consulted by the Secretary of State, said they knew of no American interest that would be jeopardized by a recognition of Norway's action, and consequently the Secretary of State acknowledged receipt of the Norwegian note without making any reservation of the rights of the United States (Foreign Relations of the United States, 1929, III, pp. 716–718).

Law Concerning Bouvet Island, 27 February 1930

(Translation from Norway, Collection of Laws & c., 1926–30, p. 685.)

[Translation]

§ 1. The Bouvet Island is placed under Norwegian Sovereignty.

§ 2. Norwegian Common Law and Penal Law as well as the Norwegian legislation concerning judicial proceedings apply to Bouvet Island. The King decides to what extent other laws shall be applied. The King may amend such laws as well as the legislation concerning judicial proceedings, when the local conditions demand amendments.

The regulations in Law regarding Svalbard (Spitsbergen) of July 7, 1925, §4 are applied correspondingly.[9]

§ 3. All land which is not sold to private persons belongs to the Crown.

A property right in land belonging to the Crown or usufructs on such land may not be gained by prescription.

When the Crown holds special rights on land which has been sold, these rights may not cease by prescription.

§ 4. The present law comes into force at once.

10. Norway: Peter I Island

Royal Proclamation, 1 May 1931

(*Norsk Lovtidende*, No. 15, 4 May 1931; translation from 134 British and Foreign State Papers, p. 1010.)

[Translation]

We, Haakon, King of Norway, make known:
Peter I Island is placed under Norwegian sovereignty.

Done at the Castle, Oslo, the 1st May, 1931.
Under our hand and the Seal of the Kingdom.

(L. S.) Haakon.

Joh. Ludw. Mowinckel. B. Rolsted.

11. Norway: Norwegian Antarctic Territory

Note. When informed of the following royal proclamation of 14 January 1939, the United States Government reserved all rights which it or its citizens may have in the area. (1 Hackworth, Digest of International Law, p. 460.) Norway is the only State making official territorial claims in Antarctica which apparently rejects the sector principle. *ibid.*, p. 463.

a. Recommendation of the Ministry of Foreign Affairs, 14 January 1939

(Translation from 34 American Journal of International Law, Supplement (1940), pp. 83–85.)

By Order in Council of the 23rd January, 1928, Bouvet Island in the Antarctic Ocean was brought under Norwegian sovereignty, and by Order in Council of the 1st May, 1931, the same thing was done with Peter I Island in the same ocean.

Bouvet Island lies in 3°24′ E. Long. and 54°26′ S. Lat., *i.e.*, in that part of the Antarctic region often called the Atlantic

[9] This section gives the King power to establish general regulations with respect to such matters as public order, expulsion, safety of navigation and air traffic, working of mines, and hunting and fishing (Norway, Collection of Laws &c., 1921–1925, p. 837). [Ed.]

Sector. Peter I Island is situated 90°35′ W. Long. and 68°50′ S. Lat., *i.e.*, in the Pacific Sector of the Antarctic region.

Our object in bringing these islands in the Southern Ocean under Norwegian sovereignty was to give the Norwegian whaling industry in that region points of support and to guard it against possible encroachment on the part of foreign Powers.

Since that time there have been discussions between the government authorities and the Norwegian interested parties as to whether it would not be right and useful to bring a part of the Antarctic mainland under Norwegian sovereignty.

Of this mainland with adjacent sea and islands, Great Britain brought under her dominion in 1908 the area that has been named the Falkland Island Dependencies. The region Ross Dependencies was brought under New Zealand in 1923; and the largest of all the Antarctic areas, from 160° to 45° E. Long., was brought under Australia in 1933. In this latter area, however, France had previously taken possession of a small area with a few islands, *viz.*, Adélie Land around 140° E. Long.

Bouvet Island lies in the ocean between the British and the Australian sectors. The land filling this intervening area is what has often been called the Atlantic Sector, and here no state has yet claimed sovereignty.

The mainland in this region long remained unknown and unexplored. We know that certain discovery expeditions long ago penetrated the seas adjacent to this mainland, *e.g.*, a Russian expedition in 1820 and two English expeditions in 1831 and 1843. But none of these expeditions got so far in as to sight land and still less to put people ashore.

It was not until 1929 that exploring expeditions reached the mainland in this part of the Antarctic, and these expeditions were Norwegian. In the summer of 1929–1930 the whaler Lars Christensen sent out an expedition under the command of Captain Riiser-Larsen, accompanied by Captain Lutzow-Holm, who did exploration work and took cartophotographs from the air along great areas of the country, including the region that was subsequently given the name of Kronprincesse Märthas Land. On a second expedition in 1930–1931 fitted out by Lars Christensen a further large area was discovered and explored by airplane; that land was named Princesse Ragnhilds Land. It was to this land that Captain Riiser-Larsen and others came on an expedition they made with the support of the Norwegian Government in 1932–1933, and there, as well as at other points within the sector here in question, Norwegian whalers were

close to the coast on many occasions during those years. Finally, in the summer of 1936–1937 Lars Christensen despatched still another expedition to the Antarctic, and on that occasion Lieutenant Wideröe piloted a plane over extensive areas, so that a great deal of new land was discovered and mapped both without and within the territory which the former expeditions had visited, a territory then explored between Dronning Mauds Land and Princesse Ragnhilds Land was named Prins Haralds Land. On all these expeditions practically the whole of the mainland within the Atlantic Sector bordering the sea was explored and mapped so well that we may say that not many parts of the Antarctic continent are better known.

It should be mentioned that Norwegian explorers, Roald Amundsen and others, have explored also other parts of the Antarctic, and in particular they have in recent years explored and mapped much of the land which was brought under Australia in 1933. There should, however, not be any question of Norway laying claim to any land that has previously been taken possession of by another state. This accords with the promise given by the Norwegian Government to Great Britain in 1929 to the effect that it would not raise any claim in respect of land within the region which had then been brought under the dominion of the British Empire.

But Norway considers that it may with full right claim dominion over that land which until now has lain unclaimed and which none but Norwegians have explored and mapped.

It is this very area which in recent years has been of capital importance to Norwegian whaling. This fishery is now prosecuted on the high seas, but as the summer advances the catches are made closer and closer to land. The mainland coast in these parts runs approximately along the 70th degree of latitude and in the beginning of the summer—in December—the edge of ice is usually along the 60th degree. It is not until February that the factory boats draw near to shore.

A question that may have an important bearing on the freedom to be extended to whaling expeditions is the determination of the limit of territorial waters. But on this question there still exists a good deal of uncertainty. It has been maintained that the ice-limit in the Antarctic must be regarded as the limit of the continent, and Great Britain and the two Britain dominions that have taken land here have in the main drawn the limit along the 60th degree of latitude. What this implies in respect of the right to sovereignty does not appear to be quite clear;

one thing is, however, certain, namely, that Norwegian whalers operating within this limit were for a number of years required to pay a licence.

For the very reason that such questions of territorial limits remain undecided, it is most desirable for the Norwegian whaling industry in those seas that Norway should hold dominion over a wide tract of the mainland with adjacent waters. Norway for her part will not claim any right to exclude other nations from the waters over which she might thus have dominion, or prevent them in any way from carrying whaling operations there. But Norwegian whalers should be ensured against the possibility of other nations excluding them from these waters or committing any action that might involve their industry in injury or loss.

The Norwegian Government has for a long time been alive to this requirement, and ever since the question arose it has been giving its attention to the preparation of an arrangement that would meet natural Norwegian demands. The government finds that the time has now come to take the final decision.

As mentioned above, Norway's right to bring the said unclaimed land under her dominion is founded on the geographical exploration work done by Norwegians in this region, in which work they have been alone.

The practical considerations which should lead to Norway's making use of the right it must thus be said to have won, arise from the Norwegian whaling operations in the Southern Ocean, and more particularly in the seas adjacent to the territory here in question.

The Ministry of Foreign Affairs therefore submits the following:

That Your Majesty be pleased to assent and subscribe to a presented draft of an Order in Council to the effect that such part of the coast of the Antarctic Continent as extends from the limits of the Falkland Islands Dependencies in the west (the boundary of Coats Land) to the limits of the Australian Antarctic Dependency in the east (45° E. long.) with the territory lying within this coast and the adjacent seas, be brought under Norwegian sovereignty:

And that the Ministry of Justice be empowered to draw up regulations for the exercise of police authority within this region.

B. Royal Proclamation, 14 January 1939

(Translation from 34 American Journal of International Law, Supplement, (1940), p. 83.)

[Translation]

We, Haakon, King of Norway, do hereby proclaim:

That part of the mainland coast in the Antarctic extending from the limits of the Falkland Islands Dependencies in the west (the boundary of Coats Land) to the limits of the Australian Anctarctic Dependency in the east (45° E. Long.) with the land lying within this coast and the environing sea, shall be brought under Norwegian sovereignty.

Given at Oslo Palace on the 14th day of January, 1939.

Under Our Hand and the Seal of the Realm.

Haakon

[L.S.]

Johan Nygaardsvold B. Rolsted

12. United States of America

Note. The position consistently taken by the United States with respect to Antarctic claims was summed up in a statement by the Acting Secretary of State of 27 December 1946 (16 Department of State Bulletin, p. 30):

"The United States Government has not recognized any claims of any other nations in the Antarctic and has reserved all rights which it may have in those areas. On the other hand, the United States has never formally asserted any claims, but claims have been asserted in its behalf by American citizens."

The reason for the United States' position is given in a statement of policy made by the Department of State on 10 November 1939 in connection with the third Antarctic expedition of Admiral Byrd (New York Times, 11 November 1939, p. 17). The statement quotes a note of Secretary of State Hughes to the Norwegian Minister of 2 April 1924, written in connection with a North Polar expedition of Captain Roald Amundsen, which reads in part as follows (Foreign Relations of the United States, 1924, II, p. 519):

"In my opinion rights similar to those which in earlier centuries were based upon the acts of a discoverer, followed by occupation or settlement consummated at long and uncertain periods thereafter, are not capable of being acquired at the present time. Today, if an explorer is able to ascertain the existence of lands still unknown to civilization, his act of so-called discovery, coupled with a formal taking of possession, would have no significance, save as he might herald the advent of the settler; and where for climatic or other reasons actual settlement would be an impossibility, as in the case of the Polar regions, such conduct on his part would afford frail support for a reasonable claim of sovereignty.

"I am therefore compelled to state, without adverting to other considerations; that this government cannot admit that such taking of possession as a discovery by Mr. Amundsen of areas explored by him could establish the basis of rights of sovereignty in the polar region."

Disapproval of the sector principle has been expressed by official quarters in

the United States. In commenting in 1929 upon the proposal of a private citizen that the United States should suggest a partition of the Artic into national sectors of five contiguous countries, the Secretary of the Navy stated that such a course of action

"(*a*) Is an effort arbitrarily to divide up a large part of the world's area amongst several countries;

"(*b*) Contains no justification for claiming sovereignty over large areas of the world's surface;

"(*c*) Violates the long recognized custom of establishing sovereignty over territory by right of discovery. . . ." (1 Hackworth, Digest of International Law, p. 464).

The areas to which nationals of the United States have asserted unofficial claims on behalf of the United States are: (1) Marie Byrd Land, comprising all the area to the east of 150° west longitude discovered or mapped by Admiral Byrd during his first two Antarctic expeditions of 1928–1929 and 1933–1934. (2) James W. Ellsworth Land, comprising the section between 80° and 120° west longitude, flown over by Lincoln Ellsworth in 1936; and (3) an area comprising about 80,000 square miles in the vicintiy of 22° S. latitude, 79° E. longitude, in the sector claimed by Great Britain as the Australian Antarctic Territory, to which point Lincoln Ellsworth flew on 11 January 1939 and dropped a cylinder containing a written claim (1 Hackworth, *op. cit.*, p. 454; V. Stefansson, "Exploration and Discovery," Encyclopedia Britannica Yearbook, 1940, pp. 271–272).

By an act of 16 June 1936 Congress voted to award a gold medal to Lincoln Ellsworth "for claiming on behalf of the United States approximately three hundred and fifty thousand square miles of land in Antarctica between the eightieth and one hundred and twentieth meridans west of Greenwich, representing the last unclaimed territory in the world" (49 Stat. 2324).

In July 1939 President Roosevelt created the United States Antarctic Service, headed by an executive committee composed of representatives of the State, Treasury, and Navy Departments and Admiral Byrd, which was to organize, direct, and coordinate the conduct of an investigation and survey of the natural resources of the land and sea areas of the Antarctic regions (1 Department of State Bulletin, p. 57). Congress made appropriations for Antarctic explorations in 1939, 1940, and 1941 (53 Stat. 986, 1321; 54 Stat. 643; 55 Stat. 360). By an act of 24 July 1946 (60 Stat. 655) Congress authorized the Secretary of the Navy to lend a naval vessel to the American Antarctic Association, Inc., for the purpose of carrying out an Antarctic expedition headed by Commander Finn Ronne, U. S. N. R.

In August 1948 the Department of State made informal proposals to other Governments with respect to the Antarctic; the text of these proposals has not yet been made public, but on 28 August 1948 the Department of State issued a press release concerning them. Press reports indicate that Chile and the Argentine Republic replied that they thought no agreement could be reached; Norway expected some difficulty; and Great Britain welcomed the suggestion. London Times, 28 December 1948, p. 3.

Department of State Press Release, 28 August 1948

(19 Department of State Bulletin, p. 301.)

The Department of State has approached the Governments of Argentina, Australia, Chile, France, New Zealand, Norway,

and the United Kingdom informally with a suggestion that a solution for the territorial problem of Antarctica be discussed. It is the viewpoint of the Department of State that the solution should be such as to promote scientific investigation and research in the area. The Department of State has suggested that this can perhaps be done most effectively and the problem of conflicting claims at the same time solved through agreement upon some form of internationalization. The Department of State expects that the question is one which will require an extended exchange of views, consideration of suggestions, and probably reconciliation of varying viewpoints. Until such exchange of views and necessary further study is completed, it is not believed that any useful purpose could be accomplished by a conference on the subject, and no such conference is contemplated at present.

VI. PROVISIONS RELATING TO INTERNATIONAL LAW IN CONSTITUTIONS ADOPTED SINCE 1945

1. Constitution of the Argentine Republic, 16 March 1949

(*Diario de Sesiones*, 16 March 1949; translation from A. J. Peaslee, Constitutions of Nations.)

[Translation]

ARTICLE 19. The Federal Government is bound to consolidate its relations of peace and commerce with foreign powers by means of treaties that are in conformity with the principles of public right laid down by this Constitution.

ARTICLE 22. This Constitution, the laws of the Nation dictated by Congress in consequence thereof, and the treaties with foreign powers are the supreme law of the Nation; and the authorities of each province are obliged to conform thereto, notwithstanding any rule to the contrary which the provincial laws or constitutions may contain, with the exception, so far as the Province of Buenos Aires is concerned, of the treaties ratified following the Pact of November 11, 1859.

ARTICLE 68. Congress shall have the power: . . .

(12) To regulate commerce with foreign nations and among the provinces;

(19) To approve or reject treaties signed with other nations and agreements with the Vatican, and to arrange the exercise of the ecclesiastical patronage in the whole Nation;

(21) To authorize the executive power to declare war or make peace;

(22) To authorize reprisals and to make rules concerning captures;

(23) To fix the strength of the armed forces in time of peace and of war, to provide regulations and rules for governing them, and to pass special legislation concerning expropriations and requisitions in time of war;

(24) To allow the introduction of foreign troops into the territory of the Nation and to allow national troops to leave the country, except for reasons of international courtesy, in which case the authorization of the executive power shall be sufficient.

ARTICLE 83. The President of the Nation has the following powers:

(14) He concludes and signs treaties of peace, of trade, of navigation, of alliance, of boundaries and neutrality,

agreements with the Pope, and other negotiations required for the maintenance of good relations with foreign nations, receives their ministers and admits their consuls.

Article 95. The Supreme Court of Justice and the inferior courts of the Nation shall have jurisdiction of all cases turning upon points governed by the Constitution; by the laws of the Nation, with the reservations specified in paragraph (11) of Article 68; and by treaties with foreign nations; of all suits referring to ambassadors, ministers plenipotentiary, and foreign consuls; in cases of admiralty, maritime and aeronautical jurisdiction; in suits, in which the Nation is a party; in cases arising in the federal capital and in places governed by the legislation of Congress; in suits between two or more provinces; between one province and the citizens of another province; and between the Nation or a province or its inhabitants and a foreign State. . .

Article 96. The Supreme Court of Justice shall have original and exclusive jurisdiction in cases arising between a Nation or a province or its inhabitants and a foreign State; in cases concerning ambassadors, ministers plenipotentiary or foreign consuls; and in cases between the Nation and one or more provinces or between the provinces.

2. Constitution of the United States of Brazil, 18 September 1946

(*Diario Oficial*, 15 October 1946; translation from R. H. Fitzgibbon, The Constitutions of the Americas, pp. 60–106.)

[Translation]

Article 4. Brazil shall resort to war only in case of non-applicability or failure of resort to arbitration or pacific means of solution of the conflict, regulated by any international organ of security in which it may participate; and in no case shall it embark on a war of conquest, directly or indirectly by itself or in alliance with another State.

Article 5. The Union shall have power:

I. To maintain relations with foreign States and to negotiate treaties and conventions with them.

II. To declare war and to make peace.

V. To permit foreign forces to pass through national territory, or, for reasons of war, to remain therein temporarily.

Article 66. The national Congress shall have exclusive power:

I. To give final decision respecting treaties and conventions negotiated with foreign States by the President of the Republic.

II. To authorize the President of the Republic to declare war and make peace.

III. To authorize the President of the Republic to permit foreign forces to pass through national territory, or, by reason of war, to remain therein temporarily.

ARTICLE 87. The President of the Republic shall have exclusive power: . . .

VI. To maintain relations with foreign States.

VII. To negotiate international treaties and conventions, subject to referendum of the national Congress.

VIII. To declare war, after authorization by the national Congress, but without this authorization in the case of foreign aggression, when such occurs in the interval between legislative sessions.

IX. To make peace, with the authorization and subject to referendum of the national Congress.

X. To permit, upon authorization by the national Congress, but without this authorization in the interval between legislative sessions, foreign forces to pass through the territory of the country or, by reason of war, to remain therein temporarily.

ARTICLE 101. The federal Supreme Tribunal shall have power:

I. To prosecute and judge in first instance: . . .

(*d*) Litigation between foreign States and the Union, the States, the federal district, or the municipalities.

(*g*) Extradition of criminals, requested by foreign States, and the confirmation of foreign sentences.

II. To judge on ordinary appeal: . . .

(*b*) Cases decided by local judges, based on a treaty or contract of the Union with a foreign State, as well as those in which a foreign State and a person domiciled in the country may be parties.

III. To judge on special appeal cases decided in sole or final instance by other tribunals or judges:

(*a*) When the decision is contrary to a provision of this Constitution or the letter of a federal treaty or law.

ARTICLE 102. With voluntary appeal to the federal Supreme Tribunal, its President shall have power to grant exequatur to letters rogatory from foreign tribunals.

3. Constitution of The Union of Burma, 24 September 1947

(Text published by the Burmese Government, 1947.)

CHAPTER XII

International Relations

211. The Union of Burma renounces war as an instrument of national policy, and accepts the generally recognized principles of international law as its rule of conduct in its relation with foreign States.

212. The Union of Burma affirms its devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality.

213. (1) Every international agreement to which the Union becomes a party shall be laid before the Parliament.

(2) No international agreement requiring or likely to require legislation in order to give effect thereto shall be ratified except with the approval of the Parliament.

(3) No international agreement involving a charge upon the revenues of the Union shall be ratified unless the terms of the agreement shall have been approved by the Chamber of Deputies.

Explanation.—This section shall not apply to inter-governmental agreements or conventions of a technical or administrative character.

214. No international agreement as such shall be part of the municipal law of the Union, save as may be determined by the Parliament.

4. Constitution of the Dominican Republic, 10 January 1947

(*Gaceta Oficial*, 19 January 1947, No. 6569; translation from R. H. Fitzgibbon, The Constitutions of the Americas, pp. 299–320.)

[Translation]

ARTICLE 33. The powers of the Congress are: . . .

15. To approve or disapprove international treaties and conventions that the Executive negotiates.

ARTICLE 49. The President of the Republic is the chief of the public administration and the supreme commander of all the armed forces of the Republic.

It is within the competence of the President of the Republic: . . .

6. To receive foreign chiefs of State and their representatives.

7. To preside over all the official acts of the Nation, to direct diplomatic negotiations, and to negotiate treaties with foreign Nations, having to submit them to the approval of the

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Congress, without which they have no validity and do not obligate the Republic.

14. To declare war, on a previous decree of the Congress, and to settle the peace, when it may be necessary, with the approval of the Congress.

15. In case of international war, he may arrest or expel from national territory individuals of the Nation with which the war is being waged, and, in general, aliens whose activities, in the judgment of the Executive, have been or may be prejudicial to the national interest.

5. Political Constitution of the Republic of Ecuador, 31 December 1946

(*Registro Oficial*, 31 December 1946; translation based on R. H. Fitzgibbon, The Contitutions of the Americas, pp. 323–365.)

[Translation]

Article 4. The national territory includes, in addition to the continental Provinces situated in South America, the adjacent islands, the Archipelago of Colón or of the Galápagos, the territorial sea, the subsoil, and their respective air spaces.

The national territory is inalienable, and no treaty may be concluded which affects its integrity or impairs national sovereignty, without prejudice to the duties imposed by the international juridical community.

Article 5. The Republic of Ecuador respects the norms of international law, and proclaims the principle of cooperation and good neighborliness among States, and the solution by juridical means of international controversies.

Article 6. Ecuador will collaborate within the world community of nations for the defense of its common territorial, economic, and cultural interests, especially with the Ibero-American States, with which it is united by ties of solidarity and interdependence arising out of identity of origin and culture. It may, consequently, form with one or more of the said States associations which have as their object the defense of such interests.

Article 53. The Congress, divided into Chambers, has power: . . .

15th. To approve or disapprove of public treaties or other conventions, which cannot be ratified and whose ratifications cannot be exchanged without this approval.

17th. To permit or deny the transit of foreign troops through the territory of the Republic, and the transit or stopping of

surface or submarine warships in territorial waters for a greater time than that allowed by international practices. There is equal authority governing the transit, arrival, and stay of military airplanes. These dispositions do not apply to cases of forced arrival or landing.

19th. To open and close ports.

Article 55. The Full Congress has power: . . .

12th. To declare war and to make peace, in view of the information submitted by the President of the Republic.

Article 71. Treaties and conventions will be considered by the Full Congress in a single discussion, without prejudice to the provision of the 15th clause of Article 53, and the pertinent decree which will be issued will not be subject to the general regulation relative to the term within which decrees must be issued, for their sanction.[10] In consequence the Executive may delay it, if he considers it appropriate, giving an account of his decision to the Congress, in public or secret as he judges best.

Article 92. The powers and duties of the President of the Republic are: . . .

7th. To direct the international relations and diplomatic negotiations of the Republic, to conclude treaties and ratify them with the previous approval of the Congress, and to exchange ratifications.

Article 99. The President of the Republic or the one who exercises the office . . . is . . . especially responsible for . . . provoking an unjust war. . . .

Article 146. The powers and duties of the Council of State are: . . .

14th. To permit or deny the transit of foreign troops through the territory of the Republic, and the transit or stopping of surface or submarine warships in territorial waters for a greater time than that allowed by international practices. There is equal authority governing the transit, arrival, and stay of military airplanes. The dispositions of this section do not apply to cases of forced arrival or landing.

Article 189. The Constitution is the supreme juridical norm of the Republic. Therefore any laws, decrees, regulations, ordinances, provisions, pacts, or public treaties which in any way are in contradiction to it or depart from its text are without effect.

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[10] Article 75 of the Constitution provides that laws and decrees will be promulgated by the Executive within the 15 days following his approval.—[Ed.]

Only the Congress has the power to interpret the Constitution in a generally binding manner, and to resolve doubts which arise concerning the meaning of one or more of its terms.

Likewise only the Congress has the function of declaring whether a law or legislative decree is or is not unconstitutional.

6. Constitution of the French Republic, 27 October 1946

(*Journal Officiel*, 28 October 1946.)

[Translation]

PREAMBLE. . . . Every man persecuted by reason of his action in behalf of liberty has the right to asylum in the territories of the Republic. . . .

The French Republic, faithful to its traditions, conforms to the rules of public international law. It will undertake no war with a view to conquest and will never use its forces against the liberty of any people.

On condition of reciprocity, France consents to limitations of sovereignty which are necessary for the organization and defence of peace. . . .

ARTICLE 26. Diplomatic treaties regularly ratified and published have the force of law even should they be contrary to internal French laws, and to ensure their application there is no need of other legislative dispositions than those which would have been necessary to ensure their ratification.

ARTICLE 27. Treaties relating to international organization, treaties of peace, treaties which engage the finances of the State, those which are relative to the status of persons and to the property rights of French citizens abroad, those which modify French internal laws, and also those which bring about a cession, exchange or addition of territory, are not definitive until after they have been ratified by virtue of a law.

No cession, exchange, or addition of territory is valid without the consent of the populations concerned.

ARTICLE 28. As diplomatic treaties regularly ratified and published have an authority superior to that of internal laws, their dispositions cannot be abrogated, modified, or suspended otherwise than after a regular denunciation of which notice has been given through diplomatic channels. When treaties covered by Article 27 are concerned, the denunciation must be authorized by the National Assembly, except in the case of treaties of commerce.

ARTICLE 31. The President is kept informed of international negotiations. He signs and ratifies treaties.

The President of the Republic accredits ambassadors and envoys extraordinary to foreign powers; foreign ambassadors and envoys are accredited to him.

7. German Constitutions

a. Basic Law for the Federal Republic of Germany, 20 May 1949

(United States Department of State Publication 3526.)

[Translation]

Article 16. (1) No one may be deprived of his German citizenship. The loss of citizenship may occur only on the basis of a law and, against the will of the person concerned, only if the person concerned is not rendered stateless thereby.

(2) No German may be extradited to a foreign country. The politically persecuted shall enjoy the right of asylum.

Article 24. (1) The Federation may, by legislation, transfer sovereign powers to international institutions.

(2) In order to preserve peace, the Federation may join a system of mutual collective security; in doing so it will consent to those limitations of its sovereign powers which will bring about and secure a peaceful and lasting order in Europe and among the nations of the world.

(3) For the settlement of international disputes, the Federation will join a general, comprehensive, obligatory system of international arbitration.

Article 25. The general rules of international law shall form part of federal law. They shall take precedence over the laws and create rights and duties directly for the inhabitants of the federal territory.

Article 26. (1) Activities tending to disturb or undertaken with the intention of disturbing the peaceful relations between nations, and especially preparing for aggressive war, shall be unconstitutional. They shall be made subject to punishment.

(2) Weapons designed for warfare may be manufactured, transported or marketed only with the permission of the Federal Government. Details shall be regulated by a federal law.

Article 32. (1) The maintenance of relations with foreign states shall be the affair of the Federation.

(2) Before the conclusion of a treaty affecting the special

conditions of a Land, the Land must be consulted sufficiently early.

(3) Insofar as the Laender are competent to legislate, they may, with the approval of the Federal Government, conclude treaties with foreign states.

Article 59. (1) The Federal President shall represent the Federation in matters concerning international law. He shall conclude treaties with foreign states on behalf of the Federation. He shall accredit and receive the envoys.

(2) Treaties which regulate the political relations of the Federation or refer to matters of federal legislation shall require, in the form of a federal law, the approval or the praticipation of the corporations competent at the time for federal legislation. For administrative agreements the provisions concerning the federal administraton shall apply appropriately.

Article 73. The Federation shall have exclusive legislation on:

1. Foreign affairs;
2. Citizenship of the Federation;
3. Freedom of movement, passports, immigration, emigration and extradition;
5. The unity of customs and commercial territory, commercial and navigation agreements, the freedom of traffic in goods and the traffic in goods and payments with foreign conutries, including customs and frontier protection.

Article 100. (2) If in litigation it is doubtful whether a rule of international law forms part of federal law and whether it creates direct rights and duties for the individual (Article 25), the court shall obtain the decision of the Federal Constitutional Court.

b. Constitution of the Republic of Bavaria, 1 December 1946

(Office of Military Government for Germany (U. S.), Constitutions of Bavaria, Hesse, and Württemberg-Baden (1947), pp. 33–55.)

[Translation]

Article 84. The generally recognized principles of international law as valid as part of domestic law.

c. Constitution of the State of Hesse, 1 December 1946

(Office of Military Government for Germany (U. S.), Constitutions of Bavaria, Hesse, and Württemberg-Baden (1947), pp. 33–55.)

[Translation]

Article 67. The rules of internatonal law are valid as part of the law of the State without requiring express incorporation in the law of the State. No law is valid which conflicts with such rules or with a State treaty.

d. Constitution for Württemberg-Baden, 24 November 1946

(Office of Military Government for Germany (U. S.), Constitutions of Bavaria, Hesse, and Württemberg-Baden (1947), pp. 33–55.)

[Translation]

Article 46. The generally recognized rules of international law are binding integral parts of the law of the State. They are binding for the State and for the individual citizen.

The rights granted to foreigners by international law may be claimed by them, even though they are not set forth in State legislation.

8. Constitution of the Republic of Haiti, 23 December 1946

(*Le Moniteur*, 23 December 1946; translation based on R. H. Fitzgibbon, The Constitutions of the Americas, pp. 444–466.)

[Translation]

Article 1. The Republic of Haiti is one, indivisible, free, sovereign, independent, democratic, and social.

Port-au-Prince is its capital and the seat of its government.

All islands lying within the limits consecrated by international law, of which the principal ones are La Tortue, La Gonâve, l'Ile-à-Vache, les Cayemittes, la Navase, and la Grande Caye, from an integral part of the territory of the Republic, which territory is inviolable and cannot be alienated by any treaty or convention.

Article 10. The right of [owning] real property is granted to aliens resident in Haiti and to foreign corporations for their dwelling needs.

However, an alien resident in Haiti may not, in any case, become owner of more than one place of habitation in a locality. He may not, in any case, engage in the business of renting real property.

The right of [owning] real property is likewise granted to

aliens resident in Haiti and to foreign corporations for the needs of their agricultural, commercial, industrial, or teaching enterprises, within the limits and conditions to be determined by the law.

The right will come to an end within a period of two years after the alien has ceased to reside in the country or the corporations have ceased operations. And the State will become owner in full right, in conformity with the law that determines the extent of the right of property and the regulations to be followed for the transmission and liquidation of properties.

Any citizen is entitled, with benefit to himself of certain advantages determined by law, to denounce violations of this present provision.

Article 31. Extradition will not be granted or requested in political matters.

Article 47. The powers of the National Assembly are: . . .

2nd. To declare war, upon a report by the Executive.

3rd. To approve or reject treaties of peace and other international treaties and conventions.

Article 84. The President of the Republic . . . is charged with supervising the execution of the treaties of the Republic.

He makes all international treaties or conventions, subject to the approval of the National Assembly, to the ratification of which he likewise submits all executive agreements.

9. Constitution of the Italian Republic, 1 January 1948

(*Gazzetta Offiziale*, 27 December 1947.)

[Translation]

Article 10. The Italian juridical order conforms to the generally recognized forms of international law.

The juridical condition of aliens is regulated by the law in conformity with international norms and treaties.

An alien whose effective exercise of the democratic liberties guaranteed by the Italian Constitution is hindered in his own country has a right of asylum in the territory of the Republic, under conditions established by law.

Extradition of aliens for political offenses is not allowed.

Article 11. Italy repudiates war as an instrument of offence against the liberty of other peoples and as a means of solution of international controversies; Italy consents, on condition of parity with other States, to limitations of sovereignty necessary to an order which will assure peace and justice among

Nations; and Italy promotes and favors international organizations directed to this end.

Article 16. . . . Every citizen is free to leave and re-enter the territory of the Republic, subject only to legal obligations.

Article 26. The extradition of a citizen can be consented to only where it is expressly provided for by international conventions.

It cannot be allowed in any case for political offenses.

Article 35. The Republic . . . promotes and favors international agreements and organizations intended to strengthen and regulate the rights of labor.

It recognizes freedom of emigration, except where contrary to obligations estabilshed by law in the general interest, and protects Italian labor abroad.

Article 75. . . . The referendum is not allowed for laws . . . granting authoriaztion to ratify international treaties.

Article 80. The Chambers [Chamber of Deputies and Senate] authorize by laws the ratification of international treaties which are of a political nature, or provide for arbitrations or judicial settlements, or bring about changes of territory or burdens on the finances or modifications of laws.

Article 87. The President of the Republic is the head of the State and represents the national unity. . . .

He accredits and receives diplomatic representatives and ratifies international treaties, with previous authorization of the Chambers when necessary.

10. Constitution of Japan, 3 November 1946

(United States Department of State Publication 2836.)

[Translation]

We, the Japanese people, desire peace for all time and are deeply conscious of the high ideals controlling human relationship, and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want.

We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain

their own sovereignty and justify their sovereign relationship with other nations.

We, the Japanese people, pledge our national honor to accomplish these high ideals and purposes with all our resources.

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of state on behalf of the people:

Promulgation of amendments of the constitution, laws, cabinet orders and treaties. . . .

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

Article 73. The Cabinet, in addition to other general administrative functions, shall perform the following functions:

Administer the law faithfully; conduct affairs of state.

Manage foreign affairs.

Conclude treaties. However, it shall obtain prior or, depending on circumstances, subsequent approval of the Diet. . . .

Article 98. This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

11. Constitution of Nicaragua, 22 January 1948

(*Constitucion Política y Leyes Constitutivas de Nicaragua*, 1948

[Translation]

Article 1. Nicaragua is a unitary, free, sovereign and independent State.

Article 2. The basis of the national territory is the *uti possidetis juris* of 1821. The territory between the Atlantic and Pacific Oceans and the Republics of Honduras and Costa Rica is included, and this territory embraces also the adjacent islands, the territorial sea, the continental shelves, and the air space and stratospheric space. Boundaries which are not yet determined shall be fixed by treaties and the law.

Article 3. The territory and the sovereignty are indivisible and inalienable. Nonetheless treaties may be concluded which tend toward union with one or more republics of Central

America, or which have as their object the construction, guarantee, operation, and defense of an interoceanic canal through the national territory, or which have as their aim the temporary use by an American power of the soil, air, stratosphere, or territorial waters exclusively for continental defense.

Article 7. Nicaragua proscribes aggressive war and intervention in the internal affairs of other States. It espouses the principles contained in the Atlantic Charter; it recognizes the right of self-determination of peoples and recognizes arbitration as a means of resolving international conflicts.

Article 22. Foreigners enjoy in Nicaragua all civil rights and guarantees granted to Nicaraguans, without other limitations than those established by laws.

They are obliged to respect the authorities, to obey the laws, and to pay all ordinary and extraordinary contributions to which Nicaraguans are subject.

Article 23. Foreigners must not in any way interfere in the political activities of the country.

For contravention, though they remain without prejudice subject to the responsibilities which would ordinarily arise, they may be expelled without previous adjudication by the President of the Republic in Council of Ministers, except where the foreigner has a Nicaraguan wife, or legitimate or illegitimate children by a Nicaraguan mother which have been recognized previous to the act which is to be punished.

Article 24. Foreigners cannot make claims upon nor demand any indemnification from the State except in the cases and in the form in which Nicaraguans could do so; but neither foreigners nor Nicaraguans can claim indemnification from the State when they are damaged in person or property by acts which were not done by legitimate authorities in their public character.

Article 25. Foreigners cannot have recourse to diplomatic means except in cases of denial of justice. The fact that a judgment which has been rendered is unfavorable to the claimant does not constitute a denial of justice. Those who contravene this provision lose the right to live in the country.

Article 27. Extradition of foreigners for political crimes or common crimes connected with political ones cannot be allowed. The definition of such crimes is in accordance with treaties or is prescribed by the Supreme Court of Justice if there are no treaties.

Article 64. There shall be no confiscation of property except

against nationals of an enemy country, and then of not more than seventy-five per cent of their respective net capital when the foreigners are married to Nicaraguan wives or have Nicaraguan children. The twenty-five per cent shall be for the benefit of such Nicaraguan wife and children.

The proceeds of the confiscated property must serve in the first place to indemnify Nicaraguans for confiscations or exactions they have suffered at the hands of the enemy country. . . .

Article 100. The State does not recognize the legal existtence of political parties having an international organization, nor that of communist and fascist parties with similar tendencies even when they adopt other designations. Individuals belonging to them cannot perform any public charge and shall be subject to the sanction established by law. The sole exception is international parties which are neither communist nor totalitarian and which tend toward the union of Central America.

Article 133. The Legislative Power, acting in separate Chambers, shall have power: . . .

(7) To approve or disapprove treaties concluded with foreign nations. The treaties referred to in Article 3 shall require a two-thirds vote for their approval.

(13) To declare war or authorize the Executive to such end.

Article 182. The President of the Republic as the supreme administrative authority shall have power:

(1) To defend the independence and the honor of the Nation and the integrity of its territory.

(5) To direct foreign relations, to name the Diplomatic Agents and Consuls of the Republic, and to receive the Diplomatic Agents and admit the Consuls of other nations.

(6) To declare war with the authorization of Congress or to make war without such authorization when it is urgent to repel a foreign aggression.

(7) To conclude treaties and all other diplomatic negotiations, and to ratify them with the previous approval of the Legislative Power.

(8) To permit or deny the transit of foreign troops through the territory of the Republic.

12. Constitution of the Republic of Panama, 1 March 1946

(*Constitución de la República de Panamá, Edición Oficial*; translation based on R. H.Fitzgibbon, The Constitutions of the America, pp. 605–651.)

[Translation]

Article 3. The Republic of Panama is constituted on the

continental and insular territory included between Colombia and Costa Rica, in accordance with the boundary treaties concluded by Panama with those Republics.

The jurisdictional limitations stipulated in the public treaties negotiated prior to this Constitution are recognized.

Article 4. The Republic of Panama respects the norms of international law.

Article 118. The legislative functions of the National Assembly consist in enacting the laws necessary for the fulfillment of the ends and the exercise of the functions of the State declared in this Constitution, and especially the following: . . .

5th. To approve or disapprove public treaties negotiated by the Executive.

8th. To declare war and empower the Executive to negotiate peace

Article 144. Powers that the President of the Republic must exercise with the co-operation of the respective Minister, of the Cabinet Council, or of the permanent legislative committee, as the case may be, are: . . .

8th. To direct foreign relations; to accredit and receive diplomatic agents and consuls as well as to negotiate public treaties and conventions, which will be submitted to the consideration of the National Assembly.

Article 231. No foreign Government or foreign official or semi-official entity or institution may acquire ownership over any part of the national territory.

13. Constitution of the United States of Venezuela, 5 July 1947

[Venezuela, Ministry of Interior Relations, *Constitucion Nacional* (1947).] Translation]

Preliminary Declaration.—The Venezuelan Nation proclaims as the basic reason of its existence the spiritual, political, and economic liberty of man, based on human dignity, social justice, and the equitable participation of all the people in the enjoyment of the national wealth.

From that fundamental reason the Nation derives its functions of defense, of law, and of culture, for the achievement of its essential aims, consisting chiefly of: . . .

the affirmation of its own nationality, in sustained harmony with paternal cooperation in the concert of nations for the

purposes of peace and progress, and with mutual respect of sovereignty;

the support of democracy as the only and irrevocable system for governing its internal relations, and peaceful collaboration for the purpose of promoting that system in the government and relations of all peoples of the earth.

The Venezuelan Nation repudiates war, conquest, and the abuse of economic power as instruments of international policy; it reaffirms its desire to settle all conflicts and controversies with other states by pacific means established in pacts and treaties to which it is a party; it endorses the principle of self-determination of peoples, and recognizes international law as an adequate rule for guaranteeing the rights of man and of nations in the terms and for the purposes of the present Declaration.

Article 20. . . . Foreigners are obliged to respect legal precepts on the same terms as are demanded of Venezuelans, while they reside in the territory of the Republic.

Article 21. Without prejudice to the dispositions in international agreements, foreigners have in Venezuela the duties and rights accorded to them by this Constitution and the laws; but neither the former not the latter can be greater than the duties and rights of Venezuelans.

The laws may establish restrictions with respect to the exercise of the rights belonging to all foreigners or to a determined class of them, when serious reasons of interior or exterior security or reasons of a sanitary nature so demand.

Confiscation can only be imposed on foreigners, and only in case of conflict with their country.

Article 33. The Nation recognizes asylum for political reasons, with only the limitations established by law, the principles of international law, and public treaties.

Article 104. The Nation will cooperate in the international community for the realization of the ends of common security and defense, in conformity with the provisions of this Constitution and of international pacts duly approved and ratified.

Article 105. Treaties, conventions, and agreements concluded by the Executive Power must be approved by the National Congress in order to have validity, except where they deal with executing or perfecting pre-existing obligations of the Republic, with applying principles expressly recognized by it, with the execution of ordinary acts of international relations, or with the exercise of powers expressly attributed by law to th Executive Power.

Nonetheless, the Permanent Committee of the National Congress may authorize the provisional execution of international treaties and agreements whose urgency so requires; such treaties and agreements will in every case be submitted for the later approval or disapproval of the Legislative Chambers.

In every case the National Executive will give an account of the treaties, conventions and agreements concluded by it, with a precise indication of their character and contents, to the Legislative Chambers at their next sessions, whether or not they are subject to the approval of the Chambers.

Article 106. In the international engagements contracted by the Republic there shall be inserted a clause whereby the parties oblige themselves to decide by the pacific means recognized in international law or previously agreed on by them, if such be the case, controversies which may arise between such parties with respect to the interpretation or execution of the treaty, whenever it is judged necessary considering the nature of such treaty or whenever the procedure which must be followed for its conclusion permits.

Article 107. No contract of national, state, or municipal public interest can be concluded with foreign governments, nor transferred to them in whole or in part. Nor can such contracts be concluded with companies which are not domiciled in Venezuela, nor can contracts made with third persons be transferred to them.

To conclude such contracts with foreign official or semi-official entities with autonomous juridical personality, or to transfer them to such entities in whole or in part, in each case the authorization is required of the Legislative Chambers, or of the Permanent Committee if they are urgent and the Chambers are in recess.

Article 108. In the contracts referred to by the previous article, if it is in accord with their nature, a clause shall be considered to be incorporated even where it is not express by which it is established that the doubts and controversies which may arise concerning said contracts and which are not amicably solved by the contracting parties shall be decided by the competent tribunals of Venezuela, in conformity with its laws, and shall not for any reason be able to give rise to foreign claims.

Article 138. The competence of the national power shall extend to:

1. The international acts of the United States of Venezuela as a sovereign nation.

ARTICLE 162. The Legislative Chambers as co-legislative bodies shall have the following attributions:

1. To approve or disapprove international treaties, conventions, or agreements which are subject to this requirement in conformity with Article 105 of this Constitution; . . .

ARTICLE 198. The attributions and duties of the President of the Republic are: . . .

2. To represent the Nation in its relations with the other nations, to name the diplomatic and consular agents of the Republic, and to receive the diplomatic representatives of other States;

3. To direct, through the appropriate Minister, the foreign relations of the Republic and diplomatic negotiations, and to conclude through plenipotentiaries designated by him in the Council of Ministers treaties, conventions or agreements with other nations.

4. To adhere, with the approval of the Permanent Committee of the Congress and of the Council of Ministers, to multilateral treaties which are of interest to the Republic and to sign, in the name of Venezuela, through plenipotentiaries designated by him, those in whose preliminary discussions Venezuela has participated;

5. To submit to the approval of the Legislative Chambers the treaties, conventions, and agreements for which such approval is required, to ratify them, to exchange or deposit ratifications, and to put the treaties, conventions, and agreements into execution when there is opportunity;

7. To adopt the necessary measures for the defense of the Republic, the integrity of its territory and its sovereignty in case of international emergency, and to give execution to the obligations resulting from pacts for the common security and defense to which the Republic is a party, when he shall be required to do so. In these cases he will urgently request the convocation of the Congress in extraordinary sessions, if it is not meeting, and will give it an account of all that has been done and will propose the measures he deems necessary;

8. To prohibit the entrance of foreigners into the national territory or to expel them in the cases provided for by this Constitution or by the laws of the Republic or permitted by international law; . . .

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